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THE LAW
OF
BILLS OF SALE
1882

H. NEWSON

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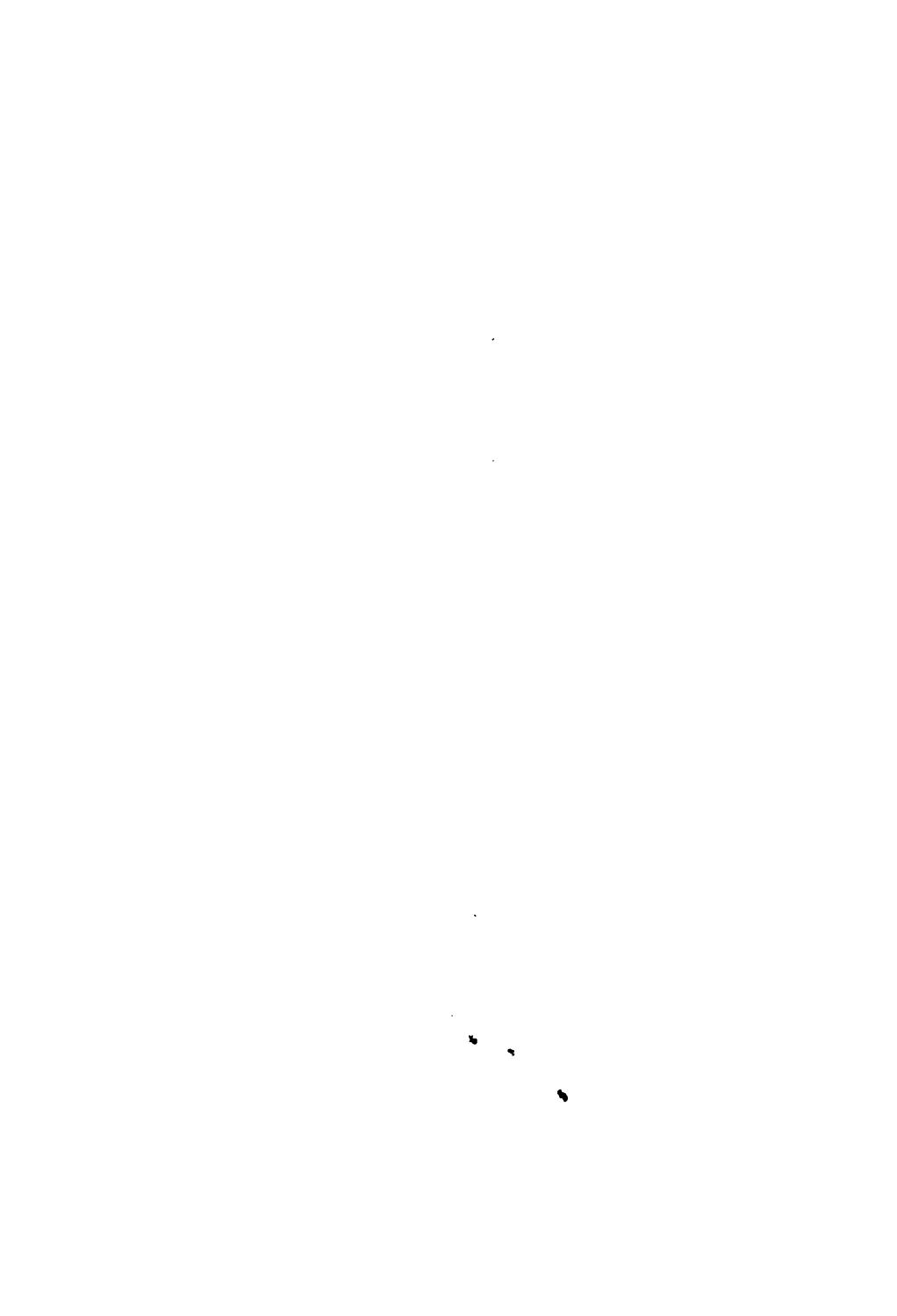
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THE LAW
OF
BILLS OF SALE.



THE LAW
OF
BILLS OF SALE,

AS MODIFIED BY
THE BILLS OF SALE ACT (1878) AMENDMENT
ACT, 1882.

WITH AN APPENDIX OF STATUTES AND PRECEDENTS.

BY
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BY THE SAME AUTHOR,
**A DIGEST of the LAW of SHIPPING
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PREFACE.

THE object of this small work is to place in the hands of the Profession a concise statement of the Law relating to Bills of Sale. The subject has somewhat frequently attracted the attention of the Legislature of late years. As a result, numerous alterations have at various times been introduced in the law, especially by the two statutes passed respectively in 1878 and in the present year. It has been the intention of the Author to treat of the subject as a whole, especial attention being drawn to the new rules on the subject, which, by virtue of the provisions of the Bills of Sale Act (1878) Amendment Act, 1882, will come into operation on the 1st of November next.

For the sake of brevity, the Bills of Sale Act (1878) Amendment Act, 1882, is cited as the Bills of Sale Act, 1882.

H. NEWSON.

1, PLOWDEN BUILDINGS, TEMPLE.
20th August, 1882.

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THE LAW
OF
BILLS OF SALE.

CHAPTER I.

BILLS OF SALE GENERALLY.

PREVIOUSLY to 10th June, 1854, the validity of bills of sale was entirely dependent on the common law. The same rules applied to them as to any assurance of personal goods or chattels, no registration being requisite. But on the day named the Bills of Sale Act, 1854 (*a*) came into operation, the main feature of which statute was the provision it contained with respect to the registration of bills of sale made after the 10th June, 1854. Subsequently, by the Bills of Sale Act, 1866 (*b*), it was enacted that the registration of bills of sale should be renewed every five years. Bills of sale made previously to 10th June, 1854, were not affected by the provisions of these two statutes. They continued to be entirely governed by the rules of the common law, which did not require registration.

In 1878 the law as to bills of sale was consolidated

(*a*) 17 & 18 Vict. c. 36.
(*b*) 29 & 30 Vict. c. 96.

and amended by the statute 41 & 42 Vict. c. 31, commonly called the Bills of Sale Act, 1878. In the case of bills of sale made after the 1st January, 1879, that being the day on which the Act came into operation, its provisions have continued to be binding down to the present time. Its provisions, however, by the Bills of Sale Act (1878) Amendment Act 1882 (c) have been in several very important respects modified. The latter Act, however, does not come into operation till the 1st November, 1882. Consequently in respect of bills of sale registered previously to the 1st November, 1882, the provisions of the Act of 1878 will remain unmodified. Before noticing the provisions of these statutes it is absolutely essential that the reader should have a clear and distinct knowledge of what a bill of sale really is. The common law definition of a bill of sale is a deed or instrument of assignment, by which one person grants and transfers to another the property or other interests which he may have in certain goods and chattels. No actual delivery of the goods and chattels is necessary; the bill of sale being sufficient to pass the property. The person who grants the property is termed the grantor of the bill of sale, and the person to whom it is granted is termed the grantee. It will be seen from the definition just given that the instrument by which the property is granted may be a deed. A deed is a written instrument, which must be signed and sealed by the party who makes it, and which in addition must be delivered up by him to the person whom he intends to benefit under it, or to the trustees of such person. From this it will be seen that a deed differs from an ordinary

written contract in that while it has to be signed just like the latter, it has also to be sealed and delivered.

It is not absolutely necessary that a bill of sale should be made by deed. Owing, however, to the advantages which a deed possesses over other legal instruments, it is advisable in all cases to make the bill of sale by deed. If it be so made it cannot be afterwards contended that the grantee did not give valuable consideration, and that therefore the bill of sale was bad. Again, a deed cannot be altered, or varied, or rescinded, by parol agreement. Therefore, in an action on a bill of sale made by deed, the grantor will be precluded from adducing any evidence to alter, vary, or contradict any statement or matter contained in the bill of sale. But this last rule will not hold good in the case of a bill of sale obtained by fraud, duress, or illegality. For such, as Lord Coke says of fraud, "avoid all acts, ecclesiastical or temporal."

Though it is by all means desirable to make a bill of sale by deed, yet any instrument clearly intended to operate as an assignment will suffice, provided there be valuable consideration as between the grantor and grantee. For if not made by deed, the bill of sale is governed by the rules applicable to all simple contracts, and therefore must be made for valuable consideration (*d*).

After the 1st November, 1882, the law on this subject will be to a great extent modified; for a bill of sale, made or given after the 1st November, 1882, by way of security for the payment of money by the grantor thereof,

(*d*) *Thompson v. Pettitt*, 16 L. J. Q. B. 162; *Shower v. Pilck*, 4 Ex. 478; 19 L. J. Ex. 113; *Flory v. Denny*, 7 Ex. 581; 21 L. J. Ex. 223; *Izons v. Smallpiece*; 2 B. & Ald. 551; *Exp. Montague, Re O'Brien*, 1 Ch. D. 554.

will be void, unless made in accordance with the form contained in the schedule annexed to the Bills of Sale Act (1878) Amendment Act, 1882 (e).

The subject matter of a bill of sale must be composed of goods and chattels, *i.e.* of personal as distinguished from real property. For houses and lands cannot be granted or transferred by the owner by a bill of sale; but only by means of a much more elaborate document, which is generally known as a conveyance. The necessity for this distinction between the modes of transferring real and personal property is due to the peculiarity of the law relating to real property which prevails in this country. With just pointing out the distinction, we must content ourselves, as it is the purpose of this small work to deal exclusively with bills of sale.

Bills of sale are of two kinds, absolute and conditional. By an absolute bill of sale the owner of the goods transfers or grants them absolutely and unconditionally to the grantee. On the other hand in the case of a conditional bill of sale, the transfer is made subject to the right of the grantor to demand the re-assignment of the goods on his repaying the money advanced on them. If the money be not repaid, the goods remain the absolute property of the grantee. The importance of clearly distinguishing between the two kinds is very great. For example, in the case of an absolute bill of sale, the delivery of the goods is not essential, but the grant of them is binding without any delivery as between the assignor and assignee. However, if the assignee does not take possession but allows the assignor to remain in use or possession of the

(e) 45 & 46 Vict. c. 43, *post*, p. 121.

goods or chattels as their ostensible owner, under the Bankruptcy Act, 1869, they will, should the assignor become a bankrupt or insolvent, become the property of the assignor's trustee in bankruptcy, unless indeed the bill of sale has been registered before the 1st November, 1882 (*f*). For registration, the effect of which is explained at large in Chapter V., makes the bill of sale valid even against the trustee in bankruptcy of a grantor, who is adjudicated bankrupt before the 1st November, 1882. Consequently the creditors of the assignor will not in this instance have any claim to the goods or chattels comprised in the bill provided it be duly registered. But the creditors will be entitled to them if it be an absolute bill and not registered. By the Bills of Sale Act, 1882 (*g*), however, if the grantor be adjudicated bankrupt after the day fixed for the Act to come into operation, viz. the 1st November, 1882, and the goods be in his possession, order, or disposition, they will belong to his trustee in bankruptcy in spite of the bill of sale being duly registered.

Formerly it was occasionally attempted to evade the rules in force with respect to bills of sale by means of the following device. A fictitious or imaginary rent, to which a power of distress was attached, was reserved or made payable to the creditor. The effect was that personal chattels could then be seized under the power of distress, though the instrument was not required to be registered. But the law in this respect has been altered. For now every agreement or instrument, giving a power of distress by way of security for a present, future or

(*f*) 41 & 42 Vict. c. 31, s. 20; 45 & 46 Vict. c. 43, s. 15.

(*g*) 45 & 46 Vict. c. 43, s. 15, repealing the 20th section of 41 & 42 Vict. c. 31.

contingent debt or advance, and whereby any rent is reserved to provide for the payment of interest on such debt or advance, is to be deemed a bill of sale of any personal chattels seized under the power. Mining leases, however, and leases by the mortgagee to the mortgagor of the lands or buildings mortgaged are excepted from the operation of this enactment (*h*).

In the next place, the legal position of a grantee of a conditional bill of sale must be considered. In this case it is clear that the grantee cannot claim to be put in possession of the goods or chattels, included in the bill, until the performance of the stipulated condition or the arrival of the day fixed for their delivery. For instance, if the goods are by the bill to be delivered to the grantee only on the grantor failing to pay a certain sum of money by a specified date, he of course can only claim to be put in possession of them in the event of the money not being then paid. This being so, it is plain that on the grantor becoming bankrupt or insolvent a rule different from that which governs in the case of an absolute bill of sale must be applied. For, though possession of the goods or chattels is not given to the grantee, yet nevertheless the grant is valid not only as between the parties to the instrument but also as against the creditors of the grantor as well as any other person (*i*). While, as pointed out above, the delivery of possession is necessary to make an absolute bill of sale binding on the creditors of the grantor or assignor; though on the parties themselves it will be binding without any delivery of possession.

(*h*) 41 & 42 Vict. c. 31, s. 6.

(*i*) *Meggott v. Mills*, 1 Ld. Raymond, 286; *Martindale v. Booth*, 3 B. & Ad. 498; *Dewey v. Bayntun*, 6 East, 257.

It will be seen from what has just been said that in its practical effect a conditional bill of sale differs in no way from a mortgage of goods and chattels. Both are given as a security for money advanced. No delivery of the personal property to the grantee or mortgagee, as the case may be, is required. On the other hand, it is absolutely essential to the validity of a pawn or pledge that the articles pawned be delivered into the possession of the pawnee (*k*).

(*k*) *Rosse v. Bramstead*, 2 Rolle, 439.

CHAPTER II.

STATUTORY BILLS OF SALE.

THE 4th and 6th sections of the Bills of Sale Act, 1878, (41 & 42 Vict. c. 31) enumerate not only the various instruments which are to be deemed bills of sale under the Act, but also those which are not. In the former class the following instruments are included :—

1. Bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt attached thereto, or receipts for purchase money of goods and other assurances of personal chattels.
2. Powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt.
3. Any agreement, whether intended or not, to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred (*a*).
4. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any

(*a*) 41 & 42 Vict. c. 31, s. 4.

present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only. But this is not to extend to a mortgage of real estate, which a mortgagee in possession has leased to the mortgagor at a fair and reasonable rent (*b*).

The term "bills of sale" as here used is much wider in its signification than the common law term. It will include all documents by which on an absolute sale or charge, by way of security on personal chattels, either the property in or title to the chattels is conferred or evinced, but the person who has sold or charged them retains possession of them. It has been decided that the form of the instrument is immaterial, provided that the intention to transfer or create a security by passing the immediate property be shewn (*c*).

It is not necessary that the bill of sale should be contained in one document. For *Exp. Odell, Re Walden* (*d*) shews that it may consist of several documents, which clearly form parts of one and the same transaction, even though they may not refer to each other. In that case an inventory of goods with a receipt for the money, and a contemporaneous agreement by purchaser to let the goods to the vendor for two months for £170, were held to constitute together a mortgage to secure the £170, and therefore to require registration under the Bills of Sale Act, 1854.

(*b*) 41 & 42 Vict. c. 31, s. 6.

(*c*) *Brantom v. Griffis*, 2 C. P. D. 212; 46 L. J. C. P. 408.

(*d*) 10 Ch. D. 76.

A bill of sale over goods can be given by no one but the owner. Therefore it has been held that where furniture is sold on the hire system, and by the terms of the instrument agreed on the property in it is not to pass to the purchaser till he has paid all the instalments, the instrument in question will not be a bill of sale. Neither will it therefore require to be registered in order to be valid as against the trustee in bankruptcy or liquidation of the purchaser (e). But if there be an absolute sale and delivery of the goods, the money to be paid by instalments, a subsequent agreement to secure their payment by way of a letting of the goods, will, to be valid as against the trustee in bankruptcy, require registration. Thus, in *Exp. Orme, Re Lloyd* (f) B. agreed to buy a billiard table from A., the price to be paid by instalments. The table was delivered and part of the price paid. Some of the instalments not being paid when due, B. was induced by A. to sign an agreement for the hire of the table at a monthly rent, which contained at the foot the following memorandum :—"This agreement is signed for A.'s satisfaction, and will become null and void on B. carrying out the original agreement." The subsequent agreement was not registered as a bill of sale. Shortly afterwards B. became bankrupt, and the trustee sold the billiard table and received the proceeds. The Court held the trustee entitled to the proceeds of the sale on the ground that the agreement for the purchase was not abrogated by the agreement of hiring, and that therefore the billiard table, being the property of B., passed to the trustee under his bankruptcy. This rule will apply in all instances in

(e) *Crawcour v. Salter*, 18 Ch. D. 30.

(f) 38 L. T. 328.

which the document is in effect a mortgage, the form of a letting being adopted merely to evade its appearing a mortgage (*g*). For instance where a draper under a written agreement, by which he sold the furniture in his house and shop to a furniture dealer, and hired it back at a rent of 12*s.* 6*d.* a week, remained in possession of the furniture for over four years, on his filing a petition for liquidation, the trustee was held to be entitled to the furniture, it being in the order and disposition of the debtor (*h*).

The words "inventories of goods with receipts attached thereto" are wide enough to cover even an inventory and receipt upon an absolute sale by the sheriff under a *s. i. fa.* issued on a judgment (*i*).

The words "other assurances of personal chattels" have been held to include neither an agreement which gives a lien on bills of lading (*j*), nor a building agreement, which gives the landlord an equitable interest, to date from its execution, in the building materials (*k*). Consequently such agreements need not be registered. The words will, however, cover not only assurances which confer a legal title, but also those which confer an equitable one.

The term "licenses," as used in the second list of instruments which amount to bills of sale, will only include licenses to take possession of goods and chattels as a security for a debt (*l*), and not a license to take possession of them in discharge of a debt. The case of *Ex parte*

(*g*) *Phillips v. Gibbons*, 5 W. R. 527.

(*h*) *Exp. Lovering, Re Jones*, L. R. 9 Ch. 621; 43 L. J. Bkcy. 116.

(*i*) *Chapman v. Knight*, 5 C. P. D. 308; 49 L. J. C. P. 425.

(*j*) *Exp. Watson, Re Love*, 5 Ch. D. 35; 46 L. J. Bkcy. 97.

(*k*) *Brown v. Bateman*, L. R. 2 C. P. 272; 36 L. J. C. P. 134.

(*l*) *Exp. Newitt, Re Garrud*, 16 Ch. D. 522.

Hopcraft, Re Flavell (*m*) illustrates what will amount to a license to take possession of personal chattels. There a lease by which the lessee covenanted to pay his lessor, who was a brewer, all sums due to him "on the balance of the account current," and which contained a proviso that in default of payment the lessor might seize, take possession of and sell the stock in trade, &c., was held to amount to such a license. In *Ex parte Newitt, Re Garrud* (*n*), by a stipulation in a building agreement, made between a landowner and a builder, the landowner, on the builder making default in performing his part of the agreement was to be entitled to re-enter on the land and expel the builder. On such re-entry all the materials on the premises were to be forfeited to the landowner "as and for liquidated damages." The stipulation was held not to be a bill of sale, on the ground that though it was a license to take possession of personal chattels, the possession was not to be taken as a security for a debt.

The following are the various classes of instruments which, under the Bills of Sale Act, 1878, are *not* to be deemed bills of sale:—

1. Assignments for the benefit of the creditors of the assignor.
2. Marriage settlements.
3. Transfers or assignments of any ship or vessel or of any share therein.
4. Transfers of goods in the ordinary course of business of any trade or calling.
5. Bills of sale of goods in foreign parts or at sea.

(*m*) 14 W. R. 168.

(*n*) 16 Ch. D. 522.

6. Bills of lading, India warrants, warehouse keeper's certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize either by indorsement or by delivery, the possessor of such document to transfer or receive goods, thereby represented (o).

With respect to the first class—assignments for the benefit of creditors, it is necessary that the terms of the assignment be wide enough to include all the creditors of the assignor. But it is not necessary that the instrument should expressly state that all the creditors are intended to be included (p). In *Boldero v. London and Westminster Discount Co.* (q) certain debtors in insolvent circumstances executed a deed by which they conveyed all their estate to trustees on trust to sell, and divide the proceeds rateably among the creditors, parties to the deed, and if the trustees thought fit creditors who refused or neglected to execute, and if the trustees thought proper, but not otherwise, to pay the dividends on debts due to non-assenting creditors of the debtors. The deed went on to provide for the payment of maintenance to the debtors, if the trustees thought fit. The executing creditors respectively indemnified the debtors and the trustees in respect of the bills of exchange and promissory notes made or indorsed to them respectively by the debtors in respect of the scheduled debts. Under these circumstances the Court

(o) 41 & 42 Vict. c. 31, s. 4.

(p) *General Furnishing Co. v. Venn*, 2 H. & C. 153; 32 L. J. Ex. 220; *Alton v. Harrison*, L. R. 4 Ch. 622; 38 L. J. Ch. 669; *Gresty v. Gibson*, L. R. 1 Ex. 112; *Reeves v. Watts*, L. R. 1 Q. B. 412.

(q) 5 Ex. D. 47.

held that the deed was not void under 13 Eliz. c. 5, distinguishing it from the deed in *Spencer v. Slater* (*r*) which was held fraudulent and void. In the latter case the primary object was the transfer of all the debtors' estate for the purpose of carrying on business, and not, as in the case of *Boldero v. London and Westminster Discount Co.*, for the purpose of selling the business as a going concern, and of dividing the proceeds among all the creditors, the power given by the deed to carry on the business till the sale being merely subsidiary to the object intended, viz., the sale.

Under the term "Marriage Settlements" only ante-nuptial settlements will be included, and not post-nuptial settlements, unless made in pursuance of ante-nuptial articles (*s*). The case of *Ashton v. Blackshaw* is an authority in point. There a married woman gave up to her husband £500, held on trust for her separate use, upon the understanding that her husband would settle his furniture upon her for her separate use. The husband assigned the furniture to a trustee to hold for his wife's use and benefit, but it remained in the joint possession of both the husband and wife. The assignment not being registered as a bill of sale, on the husband becoming bankrupt, the furniture was held to pass to his trustee in bankruptcy (*t*). An ante-nuptial settlement of chattels will cover chattels purchased after marriage in renewal of those included in the settlement, and no registration in respect of the new chattels will be required (*u*).

(*r*) 4 Q. B. D. 13.

(*s*) *Ashton v. Blackshaw*, L. R. 9 Eq. 510; *Gugen v. Sampson*, 4 F. & F. 974; *Fowler v. Foster*, 28 L. J. Q. B. 210.

(*t*) L. R. 9 Eq. 510.

(*u*) *Duncan v. Cushing*, L. R. 10 C. P. 551; 41 L. J. C. P. 225.

The transfer and assignment of ships, or shares in them, are regulated by the various Merchant Shipping Acts (*v*).

It has been held that bills of sale of personal chattels situate in Scotland or Ireland, though made in England by a domiciled Englishman, will be bills of sale made in "foreign parts" within the fifth class of instruments, which are not to be deemed bills of sale (*w*). Accordingly such bills of sale need not be registered.

By the Bills of Sale Act, 1882 (*x*), which comes into operation on the 1st November, 1882, the following classes of bills of sale are to be void :—

- (1.) Bills of sale are to be void except as against the grantor in respect of any personal chattels not specifically described in the Schedule thereto.
- (2.) Bills of sale are to be void except as against the grantor in respect of any personal chattels specifically described in the schedule attached thereto (with two exceptions) of which the grantor was not the true owner at the time when the bill of sale was executed (*y*).

The two classes of chattels as to which the grantor need not be the owner when the bill of sale is executed are :—

(a) Growing crops, separately assigned or charged, where such crops were actually growing at the time when the bill of sale was executed.

(b) Any fixtures separately assigned or charged,

(*v*) See Newson's Digest of The Law of Shipping and of Marine Insurance, Ch. iii., p. 9.

(*w*) *Coope v. Jecks*, L. R. 18 Eq. 597; 41 L. J. Ch. 599.

(*x*) 45 & 46 Vict. c. 43.

(*y*) 45 & 46 Vict. c. 43, s. 5.

and any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule (z).

- (3.) Bills of sale made or given by way of security for the payment of money by the grantor thereof are to be void unless made in accordance with the form in the Schedule annexed to the Act (a).
- (4.) Bills of sale made or given in consideration of any sum under £30 are to be void (b).
- (5.) Bills of sale are to be no protection in respect of personal chattels included therein which but for such bills would have been liable to be distrained under a warrant for the recovery of taxes and poor and other parochial rates (c).

It is however expressly provided that the Bills of Sale Act, 1882, is not to apply to bills of sale or other documents mentioned in sect. 4 of the Act of 1878, which are given otherwise than by way of security for the payment of money (d). Further it is enacted that nothing in the Act is to apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels and effects of such company (e).

(z) 45 & 46 Vict. c. 43, s. 6.

(a) *Ib.* s. 9. See p. 121.

(b) *Ib.* s. 12.

(c) 45 & 46 Vict. c. 43, s. 14.

(d) *Ib.* s. 3.

(e) *Ib.* s. 17.

CHAPTER III.

PROPERTY ASSIGNABLE BY BILL OF SALE.

THE 4th section of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), specifies the different classes of personal chattels which are to be assignable by bill of sale under that statute. They comprise :—

- (1.) Goods, furniture, and other articles, capable of complete transfer by delivery, i.e., such as can when sold be delivered and removed (*a*) ; and
- (2.) Fixtures and growing crops, provided such be separately assigned or charged.

But the following kinds of property are not such personal chattels :—

- (1.) Chattel interests in real estate.
- (2.) Fixtures (except trade machinery) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed.
- (3.) Growing crops when assigned together with any interest in the land on which they grow.
- (4.) Shares or interests in the stock, funds, or securities of any government, or in the capital or property of any incorporated or joint stock companies.
- (5.) Choses in action ; and
- (6.) Stock or produce on any farm or lands, which by

(*a*) *Brantom v. Griffits*, 2 C. P. D. 212.

virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where they are when the bill of sale is made.

The most usual subjects of bills of sale are furniture, stock-in-trade, and machinery. In the first place it is proposed to treat of the law which is applicable to an assignment of the first by a bill of sale. If a man assign all the furniture in his house, and it be comprised in a schedule, which is attached to the bill of sale, not only will the furniture which is on the premises on the day of the execution of the assignment pass, but also furniture already purchased and included in the schedule but not in the house on that day but placed there afterwards (b). However, as a general rule, if a bill of sale of all the furniture in his house be executed by the owner, it will only extend to the goods in the house at the date of the execution of the instrument. Consequently, household effects not then on the premises, but placed there after the execution, cannot be seized by the grantee, even though in the bill of sale a power to seize all goods, chattels, and effects on the premises has been inserted (c).

SECTION II. FIXTURES AND TRADE MACHINERY AND GROWING CROPS.

The law with regard to the assignment of fixtures by a bill of sale is somewhat complicated. If the fixtures be assigned along with the freehold or leasehold land or building to which they are attached the assignment need

(b) *Sutton v. Bath*, 1 Fos. & Fin. 152; 27 L. J. Ex. 388.

(c) *Tapfield v. Hillman*, 6 Scott, N. R. 967; 12 L. J. C. P. 311.

not be registered. But if, on the other hand, the fixtures be separately assigned, they will be included under the term "personal chattels." Consequently, the assignment of them must be registered. There is one exception to the rule laid down above, that the assignment of fixtures along with the land or building by a bill of sale need not be registered. We refer to the case of trade machinery. For by the 5th section of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), trade machinery shall in all cases after 1st January, 1879, be deemed to be personal chattels. And by the same statute any mode of disposition of trade machinery by the owner which would constitute a bill of sale in respect of any other personal chattels shall be considered to be a bill of sale within the meaning of the statute. It results from this enactment that the owner of trade machinery can transfer or grant it by bill of sale to another person, in the same way as he could transfer his furniture or other similar goods, though fixtures are not generally to be deemed so assignable. To obviate any doubt or difficulty with respect to what classes of machinery fall within the description of "trade machinery," the 5th section proceeds to detail the various kinds of machinery intended to be included under that term. It enacts that—

For the purposes of this Act:—

"Trade machinery" means the machinery used in or attached to any factory or workshop:—

1. Exclusive of the fixed motive powers, such as the water-wheels and steam-engines, and the steam boilers, donkey engines, and other fixed appurtenances of the said motive powers; and
2. Exclusive of the fixed power machinery, such

as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose ; and

3. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

“Factory or workshop” means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to, the following purposes, or any of them, that is to say,—

- (a.) In or incidental to the making any article or part of an article ; or
- (b.) In or incidental to the altering, repairing, ornamenting, or finishing of any article ; or
- (c.) In or incidental to the adapting for sale any article.

The provisions of this section may be briefly summed up thus. The fixed motive powers, the fixed power machinery, and the pipes for steam, gas, and water, in any factory or workshop, are not capable of being assigned under the Act by means of a bill of a sale. But with the exception of such, all the various kinds of machinery used in or annexed to a factory or workshop can be transferred or granted by their owner by bill of sale under the Act.

The case of *Exp. Astbury, Re Richards* (d) affords a good

illustration of the rules relating to the assignment by bills of sale of trade machinery. In that case the Court decided that the *iron rollers* in a rolling mill which had not been fitted to the rolling machine passed to the assignees under the assignment, but that the iron rollers which had been so fitted did not pass to them. It also decided that certain *weighing machines*, which were placed in holes dug in the earth and lined with brickwork, but which were not fixed to the brickwork, were not fixtures and could be transferred by bill of sale. But, on the other hand, the Court held that certain plates called *straightening plates*, which were embedded in the floor and used for the purpose of straightening iron after it was taken out of the furnace could not be so transferred, as they were fixtures.

The following articles have been held to be fixtures:— tapestry, pictures in panels, locks and keys of a house, cornices, marble chimney pieces, and a wainscot fixed by screws. While, on the other hand, it has been decided that clocks fixed to the wall, carpets nailed to the floor, and cisterns, are not fixtures, but mere chattels.

The law with regard to the assignment of growing crops by bills of sale is similar to that which applies in the case of the assignment of fixtures. In the case of fixtures or growing crops granted or transferred by means of a bill of sale, registration will only be required when they are granted apart and distinct from any interest in the soil on which they grow (e). Thus, in one instance, the lessee of a public-house, A., obtained in 1869 a loan from M., depositing his lease with M. To the lease was added a memorandum reciting that it was deposited as

(e) *Meux v. Jacobs*, L. R. 7 H. L. 481.

a security for the loan and for any money which might become due to M. for goods sold, and for the expense of "insuring the premises and the fixtures and fittings therein." The memorandum also contained an undertaking to execute, when called for, a legal mortgage. In 1873 A. borrowed £55 from J., assigning to J. by a bill of sale the fixtures and fittings. On a bill filed by M. to restrain a sale of the fittings, advertised by J., who had taken possession, the House of Lords held that the equitable mortgage to M. passed the fixtures and fittings: and that no registration was required (e). The case of *Mather v. Fraser* (f) is an authority to the same effect.

With respect to growing crops, it should be clearly understood that the assignment of growing crops will require registration under the Bills of Sale Act, 1878, only when the crops are assigned or charged separately and without the land on which they are growing. After being severed growing crops are ordinary personal goods and chattels, and as such require therefore (if assigned) to be registered under the Act (g). The Bills of Sale Act 1854 (17 & 18 Vict. c. 36), did not apply to an assignment of growing crops at all before they were severed (h).

The 7th section of the Bills of Sale Act, 1878, provides that fixtures or growing crops are not to be deemed to be separately assigned in any case where the land passes by the same instrument. The section runs thus:—"No fixtures or growing crops shall be deemed, under this Act, to

(e) *Meux v. Jacobs*, L. R. 7 H. L. 481.

(f) 25 L. J. Ch. 361.

(g) *Exp. National Mercantile Bank, Re Phillips* 16 Ch. D. 104; 50 L. J. Ch. 231.

(h) *Brantom v. Griffits and others*, 2 C. P. D. 212; 46 L. J. C. P. 408; *Exp. Payne, Re Cross*, 11 Ch. D. 539.

be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person (i)." Thus the mere fact of the fixtures or growing crops being assigned by separate words will not make the instrument a separate assignment of them. It will be observed that only freehold or leasehold interests in the land or building are referred to. There would appear, however, to be no reason to doubt that the same rule will be applied in the case of copyholds.

The rule of construction thus established is made retrospective in its operation. For by the 2nd clause of the same section it is to "be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of the Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, or assignment for the benefit of creditors, or execution of any process of any Court, which shall take place and issue after the commencement of this Act," i.e., 1st January, 1879 (i). The case of *Exp. Moore and Robinson's Banking Company, Re Armytage* (j) shews that the effect of this enactment is to extend the rule to all classes of fixtures included in assurances of real estate executed before 1st January, 1879, though the fixtures may

(i) 41 & 42 Vict. c. 81, s. 7.

(j) 14 Ch. D. 379; 49 L. J. Bkoy. 60.

consist of trade machinery, which is to be deemed personal chattels (*ante*, p. 19). In the case cited, a tramway in a quarry, and a steam crane, "cramped on to large stones, and kept in position by two guys," were held to be fixtures.

Farm stock or produce can, as a general rule, be assigned by a bill of sale. This rule is, however, subject to the important qualification that if its removal from the farm or lands be wrongful under any covenant or agreement made with the landlord, or by virtue of some custom of the country, the assignment of it by a bill of sale will be invalid (*l*).

SECTION III. STOCKS, SHARES, AND DEBTS.

Under the Bills of Sale Act, 1878, there cannot be any assignment by bill of sale of Government stock, funds, or securities, by the holder of such. Nor is he able to grant or transfer his shares or other interest in the capital or property of any incorporated or joint stock company.

The same rule also holds good in the case of debts and other choses in action, such as debentures. If the debentures, however, comprise the chattels of a company, they must be registered under the Act to be valid as against execution creditors. But non-registration will not render the debentures void as against the liquidator, in the event of the company being wound up (*l*). Policies of insurance and promissory notes are choses in action, and therefore not assignable under the Act by a bill of sale (*m*). So it has been decided that the mortgagee of a share in a

(*k*) 41 & 42 Vict. c. 31, s. 4.

(*l*) *Re Marine Mansions Co.*, L. R. 4 Eq. 601.

(*m*) *Exp. Ibbetson, Re Moore*, 8 Ch. D. 519.

partnership business could not assign his interest by a bill of sale, as such interest was only a chose in action (*n*).

The 17th section of the Bills of Sale Act, 1882, provides that nothing in that Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company (*o*). This class of debentures will accordingly continue to be governed by the old rules, unaffected by the recent statute.

SECTION IV. AFTER-ACQUIRED PROPERTY.

At Common Law goods or chattels which have not yet been acquired, but which the assignor expected to acquire, could not be validly granted by him to another person by means of a bill of sale. Thus Lord Bacon lays it down that a disposition of after-acquired property is altogether inoperative, though it may be considered as a declaration precedent, which may have effect given to it by some new act after the property is acquired. On this ground it was said by the judges in an old case, "A man cannot grant all the wool that shall grow upon his sheep, that he shall buy hereafter, for he hath the wool neither actually nor potentially" (*p*). *Robinson v. Macdonnell* (*q*) is another case which affords a good illustration of the operation of the rule. There certain shipowners assigned all the earnings and profits of one of their ships, whether due or to become due at a future date. The ship in question

(*n*) *Exp. Fletcher, Re Bainbridge*, 8 Ch. D. 218; 47 L. J. Bkcy, 70.

(*o*) 45 & 46 Vict. c. 43, s. 17.

(*p*) *Grantham v. Hawley*, Hob. 132.

(*q*) 5 M. & S. 228.

sailed to the South Seas on a whaling cruise. The voyage was successful, and a large quantity of oil was obtained. The judges decided that the oil so procured did not belong to the assignee of the earnings and profits, for it did not belong to the assignor at the date of the assignment.

It will be seen, from this instance, which has been cited, that the common law rule was, in certain individual cases, very harsh in its operation. In equity, however, the assignor, if he ever acquired the property he assigned, immediately became a trustee for the assignee in respect of it. The rule in equity is now to prevail (*r*). Therefore at the present day a man may assign property which he does not own at the date of the assignment, but which he expects to be his at some future day, in the same manner as the goods or chattels in his actual ownership and possession (*s*). However, such property must be capable of being identified, and must be specific. The description will be sufficiently specific, though it be restricted to property of a particular kind to be subsequently brought into some specific place (*t*). In *Lazarus v. Andrade* (*u*) the stock-in-trade then in certain specified premises, and also the stock-in-trade which might at any time during the continuance of the security be brought into the premises, either in substitution for, or in addition to, the stock-in-trade then there, was assigned. The assignment was held sufficient to pass the property in all the stock-in-trade afterwards brought into the premises while the security ran. But in another case, where the

(*r*) 36 & 37 Vict. c. 66, s. 25, sub-sect. 11.

(*s*) *Holroyd v. Marshall*, 10 H. L. Ca. 191; 33 L. J. Ch. 193.

(*t*) *Leatham v. Amor*, 47 L. J. Q. B. 581.

(*u*) 5 C. P. D. 318; 49 L. J. C. P. 847.

property was to be subsequently brought on to the defined premises, or "elsewhere in the Kingdom of Great Britain," the description was held to be insufficient (*v*). In all instances the intention to include after-acquired property must clearly appear. It will not be implied from doubtful terms (*w*). In addition to this, the description must be such a one as a Court of Equity will require to decree specific performance of the contract (*x*).

The leading case of *Reeve v. Whitmore* (*y*) shews that though after-acquired chattels are now assignable, yet an assignment of existing chattels, coupled with words which amount to a mere *licence* to seize after-acquired property, will not constitute an assignment of the after-acquired property. For a mere contract to amount to an assignment, it must confer an interest in the property to be acquired immediately and by its own force. No further act on the part of the assignee must be required at the time when the assignor acquires the property assigned. If the contract merely confer a licence to seize after-acquired property, and no present interest, to perfect his title the assignee must actually take possession of the property, when acquired by the assignor (*z*).

The assignment of after-acquired property must be distinguished from a mere contract to assign such property. The importance of this distinction is shewn by the case of *Collyer v. Isaacs* (*a*), recently decided in the Court of

(*v*) *Belding v. Read*, 34 L. J. Ex. 212; 3 H. & C. 955; and see *Greenbirt v. Smee*, 35 L. T. N. S. 168.

(*w*) *Re New Clydach Iron Co.*, L. R. 6 Eq. 514; *Greenbirt v. Smee*, *supra*; *Tapfield v. Hillman*, 6 M. & G. 245; 12 L. J. C. P. 311.

(*x*) *Holroyd v. Marshall*, 10 H. L. Ca. 191; 33 L. J. Ch. 193.

(*y*) 33 L. J. Ch. 63.

(*z*) *Congreve v. Evertis*, 23 L. J. Ex. 273; 10 Ex. 298; *Hope v. Hayley*, 25 L. J. Q. B. 155; 5 E. & B. 830.

(*a*) 19 Ch. D. 342.

Appeal. In that case a debtor by a bill of sale assigned for value to a creditor certain specified chattels at his place of business, "and all other chattels which might be or at any time thereafter be brought thereon in addition to or substitution thereof." The debtor became bankrupt, and after obtaining his order of discharge, brought other chattels upon the premises. The creditor in question did not prove for his debt as against the bankrupt's estate. On this evidence the Court of Appeal held that the assignment of the after-acquired chattels, though absolute in form, amounted merely to a contract to assign, for the breach of which the assignor incurred a liability provable in his bankruptcy, and from which he was released by the order of discharge. Consequently the Court decided that the goods brought on the premises after the order of discharge could not be seized by the creditor under his bill of sale.

After the 1st November, 1882, the date fixed for the Bills of Sale Act, 1882 (b), to come into operation, after-acquired property will not be affected by a bill of sale. For by the 4th section of the Act every bill of sale registered after 1st November, 1882, is required to have annexed thereto, or written thereon, a schedule containing an inventory of the personal chattels comprised in the bill of sale. And by the following section a bill of sale registered after 1st November, 1882, so far as it amounts to an assignment of chattels not specifically described in the schedule, with two exceptions, is to be absolutely void except as against the grantor. The exceptions include (1) growing crops separately assigned or charged, and

(b) 45 & 46 Vict. c. 43, ss. 4, 5.

(2) fixtures separately assigned or charged, plant or trade machinery which have been substituted for like fixtures, plant or trade machinery enumerated in the schedule.

SECTION V. POWER OF SEIZURE.

A power to seize and take possession of the goods is usually conferred on the grantee by the bill of sale. The grantee must not go beyond the strict limits of the power, or he will be adjudged a trespasser (*c*). If the power is to be exercised if the grantor does not "immediately after notice" or "immediately on demand" pay the sum advanced on the bill of sale, a reasonable time after the notice or demand should be allowed to elapse before the seizure is made. For instance, half an hour's notice will not be sufficient (*d*). It would appear that the bill of sale holder is not entitled to seize the goods assigned on the same day as he makes the demand for payment in the event of the debtor not complying with the demand (*e*). With regard to the notice or demand, it should be stated that it must be given or made to the grantor himself. A demand made on the wife of the grantor has been held not to be sufficient (*f*).

After the Bills of Sale Act, 1882, comes into operation the power of the grantee to seize, or take possession of, the chattels assigned will be seriously curtailed. Personal chattels assigned under a bill of sale, registered after 1st November, 1882, are not to be liable to be

(*c*) *Exp. Fletcher, Re Henley*, 36 L. T. 758; 25 W. R. 573.

(*d*) *Brighty v. Norton*, 32 L. J. Q. B. 38.

(*e*) *Exp. Trevor, Re Burghardt*, 1 Ch. D. 297.

(*f*) *Belding v. Read*, 3 H. & C. 955; 34 L. J. Ex. 212.

seized or taken possession of by the grantee except for one or more of the five following causes:—

- (1.) If the grantor make default in paying at the time fixed the moneys secured thereby; or in performing any covenant or agreement contained in the bill of sale, which is necessary for maintaining the security.
- (2.) If the grantor become a bankrupt, or suffer the goods assigned or any of them to be distrained for rent, rates or taxes.
- (3.) If the grantor fraudulently either remove, or suffer to be removed, the goods or any of them from the premises.
- (4.) If the grantor do not, on a written demand by the grantee, produce to him his last receipts for rent, rates and taxes; unless the grantor have some reasonable ground for not producing them (g).
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law.

Even in these five instances, however, the grantor can obtain relief. For he can apply within five days from the chattels being seized or taken possession of on account of any of the above-mentioned causes to the High Court, or to a judge thereof in chambers. And the Court or judge, if satisfied that in consequence of the payment of money or otherwise the cause of seizure no longer exists, has power to restrain the grantee from removing or selling the chattels, or to make such other order as may seem just (h).

(g) 45 & 46 Vict. c. 43, s. 7.

(h) 45 & 46 Vict. c. 43, s. 7.

Again, all personal chattels seized or taken possession of after the commencement of the Act (*i.e.*, 1st November, 1882), under any bill of sale are to remain for five clear days on the premises where they are seized or taken possession of, and may not be removed or sold till after the expiration of five clear days from the day on which they were seized (*i*). This enactment is made retrospective in its operation, and will apply to seizures under any bill of sale, whether registered before or after the commencement of the Act (*i*).

(*i*) 45 & 46 Vict. c. 43, s. 13.

CHAPTER IV.

SECTION I. THE FORM OF A BILL OF SALE.

It is a well established principle of law that a person cannot, as a general rule, validly transfer the property in chattels of which he is not the owner. Accordingly, only the owner can give a bill of sale over chattels. A person to whom the property in certain goods will only pass after the payment of the full price of them, and who has paid only part of it, cannot assign such goods by a bill of sale (a). So an undischarged bankrupt cannot make a valid bill of sale (b). But if a person who has no title to the chattels assign them by bill of sale to the grantee, the real owner, if he knows of the false assignment and does not interfere will be bound by the assignment, though his creditors will not be (c). Thus it is essential to the safety of the grantee of a bill of sale to discover whether or not the grantor is the owner of the goods he purports to assign by the bill of sale.

It may now be taken as settled law, on the authority of *Ashton v. Corrigan* (d) and *Hermann v. Hodges* (e), that equity will decree specific performance of an agreement to

(a) *Exp. Crawcour, Re Robertson*, 9 Ch. D. 419.

(b) *Exp. Sheffield, Re Austin*, 10 Ch. D. 434.

(c) *Richards v. Johnston*, 4 H. & N. 660; 28 L. J. Ex. 322; *Low v. McGill*, 12 W. R. 826.

(d) L. R. 13 Eq. 76; 41 L. J. Ch. 96.

(e) L. R. 16 Eq. 18; 43 L. J. Ch. 192.

give a bill of sale in consideration of a debt due, or of an advance actually made, unless the money be repaid; though an agreement to lend or borrow money will not be specifically enforced. So where the defendant agreed to assign certain goods to the plaintiff by bill of sale, in consideration of the plaintiff binding himself as a surety, specific performance of the agreement was decreed (*f*).

The validity of a bill of sale will not be affected by reason of the destruction of, or any alteration in, the original bill of sale, provided that a true copy has been filed (*g*). For then the chattels pass to the grantee immediately on the execution of the bill of sale, and the property will remain in him in spite of the original document being altered or destroyed.

Great care should be used in describing the chattels intended to be assigned by a bill of sale. If the grantor assign all his "effects" or "goods" or "chattels" it will amount to an absolute assignment by him of all his personal estate, with the sole exception of his chattels real (*h*). While an assignment by the grantor of his "personal estate" or "personal property" will carry even chattels real (*i*). In *White v. Hunt* (*k*) a debtor by a deed assigned all his personal estate to the defendant for the benefit of his creditors. The defendant executed the deed and acted under it. The personal estate assigned comprised a lease, which the defendant did not

(*f*) *Taylor v. Eckersley*, 2 Ch. D. 302.

(*g*) *Green v. Attenborough*, 34 L. J. Ex. 88.

(*h*) *Hogan v. Jackson*, Cwpr. 299, 304; *Campbell v. Prescott*, 15 Ves. 500, 507; *Kendall v. Kendall*, 4 Russ. 360; *Ryall v. Rolle*, 1 Atk. 164, 182.

(*i*) *White v. Hunt*, L. R. 6 Ex. 32; *Debenham v. Digby*, 21 W. R. 359.

(*k*) L. R. 6 Ex. 32.

accept by any specific act. In an action by the landlord for rent, it was held that the lease had passed to the defendant under the assignment of the personal estate, and that the defendant was therefore liable for the rent. But should these terms "personal estate" or "personal property" be coupled with others of a more restricted meaning they will be held only to include property *ejusdem generis*. Thus in *Harrison v. Blackburn* (*l*) a registered bill of sale assigned "all and every the household goods and furniture, stock in trade, and other household effects now being, or whatever hereafter shall be in or upon or about the premises known as the 'Bull's Head,' and all other the personal estate whatsoever." Then followed a power to sell and dispose of "the same premises." It was held that the grantor's term in the 'Bull's Head' did not pass under the bill of sale, notwithstanding the general words "all other the personal estate whatsoever."

The goods assigned need not be specifically enumerated in the deed. The course usually adopted now is to assign the goods by reference to an inventory or schedule annexed to the bill of sale. Then the force of the terms used in the bill of sale will be restrained by the schedule (*m*). In *Wood v. Rowcliffe* (*n*) a bill of sale assigned all the goods and furniture in a certain house "more particularly set forth in an inventory of even date." At the execution of the bill one chair was delivered to the grantees in the name of the whole of the goods. The inventory only mentioned part of the goods in the house. It was held that only those goods actually mentioned in the inventory

(*l*) 17 C. B. N. S. 678; 34 L. J. C. P. 109.

(*m*) *Sutton v. Bath*, 1 F. & F. 152.

(*n*) 6 Ex. 407; 20 L. J. Ex. 285.

passed to the grantee. On the other hand, the operation of the bill of sale cannot be enlarged by the enumeration of articles in the schedule. The important case of *Exp. Jardine, Re McManus* (*o*) illustrates this. There a foundry with all its fixtures, machinery, &c., "more particularly enumerated and specified in an inventory of even date" was assigned. The grantor's stock in trade, which was included in the inventory, but which was not mentioned in the bill of sale, was held not to pass under the assignment. But any articles essential to, or used along with, the articles assigned will pass under the bill of sale though not mentioned therein (*p*). For instance, under an assignment of looms on certain specified premises and "other effects and things thereto belonging more particularly set forth in the schedule," articles used with the looms were held to pass, though the looms only were mentioned in the schedule (*q*).

If the goods assigned are described by reference to an inventory or schedule, the inventory or schedule must be filed at the same time and together with the bill of sale. It is advisable that the schedule be contained on the same paper as the bill of sale, or annexed to it in such a way that it cannot easily be lost. If this be done, all questions as to whether it is not liable to a separate stamp duty will also be obviated.

After the Bills of Sale Act, 1882 (*r*) comes into operation a schedule will be absolutely necessary, for the 4th section enacts that "every bill of sale shall have

(*o*) L. R. 10 Ch. 322; 44 L. J. Bkcy. 58.

(*p*) *Cort v. Sagar*, 27 L. J. Ex. 378.

(*q*) *Ib.*

(*r*) 45 & 46 Vict. c. 43, s. 4.

annexed thereto, or written thereon, a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void except as against the grantor in respect of any personal chattels not so specifically described." It follows from this that a bill of sale registered after 1st November, 1882, will be void unless a schedule be annexed thereto; and even then it will be valid only in respect of the goods actually specifically described in the schedule. The 6th section of the statute saves from the operation of the provisions contained in the 4th section, (1) growing crops separately assigned or charged, and (2) fixtures separately assigned or charged, plant or trade machinery, which has been substituted for like fixtures, plant, or trade machinery specifically described in the schedule.

SECTION II. THE CONSIDERATION.

By the 8th section of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), every bill of sale to which the Act applies "shall set forth the consideration for which such bill was given." Should it not, it will be deemed fraudulent and void as against any trustee or assignee in bankruptcy or liquidation, or execution creditor, of the grantor.

Several important cases have already been decided with reference to the consideration for the bill of sale being set forth so as to fulfil the requirements of this section. The consideration means the sum of money actually paid to, and received by, the grantor for making the bill of sale. If the whole of the consideration money expressed in the

bill to have been paid to the grantor were not really so paid, but only a part thereof, the bill of sale will be held void under the Act. For instance, if from the consideration-money set forth in the bill, the grantee had retained part by way of discount, bonus, or interest in advance, the bill of sale will be vitiated thereby. The case of *Exp. Charing Cross Bank, Re Parker (s)* affords an example. There in the operative part of a bill of sale it was stated to be made in consideration of £120 advanced on its execution by the grantee to the grantor. In fact, only £90 was paid to the latter, £30 being retained by the grantee for "interest and expenses." The execution of the bill was attested by a solicitor. In the attestation clause it was stated that the effect of the bill had been explained to the grantor before execution. At the foot of the bill, the grantor had signed a receipt which set forth that the £90, "together with the agreed sum of £30 for interest and expenses," made the sum of £120, "the consideration-money within expressed to be paid." On these facts the Court of Appeal held that the receipt was not part of the bill of sale, and that the bill did not set forth the consideration for it, and was therefore void as against the grantor's trustee in liquidation. So where at the execution of a bill of sale expressed to be "in consideration of £700 now in hand paid," a sum of £7 10s. was paid to, or retained by, the grantee out of the £700 for commission on the loan and expenses in pursuance of a prior engagement, the Court of Appeal, affirming the decision of the Queen's Bench Division, held the consideration not to be truly stated.

The bill of sale was accordingly decided to be void as against an execution creditor (*t*).

The recent case of *Exp. Ralph, Re Spindler* (*u*), shews that where in the bill of sale the consideration is expressed to be paid at a particular time, it is absolutely necessary that the whole of the consideration money be paid to the grantor at that particular time. The following were the facts of the case:—By a bill of sale, dated 23rd March, certain chattels were expressed to be assigned “in consideration of £50 by the assignee paid to the assignor at or before the execution thereof.” Only £21 10s. was as a matter of fact paid to the grantor on the execution of the bill. Of the balance, the grantee retained £3 10s. for the expenses incidental to the bill, and also £25, which he paid on the 30th of March to the landlord of the grantor’s house, in which were the chattels assigned by the bill, for two quarters rent ending respectively the 25th of March and 24th of June. The rent of the house was payable quarterly, but was not proved to be payable in advance. The two sums of £3 10s. and £25 were retained on the written request of the grantor, dated the same day as the execution of the deed. On the following 25th of April a liquidation petition was filed on behalf of the grantor. The trustee in liquidation claimed the chattels comprised in the bill of sale on the ground that the consideration had not been correctly set forth in the bill. This view of the case was adopted by the Court of Appeal, in overruling the decision of Bacon, C.J. The Court of Appeal held that the consideration was not truly stated on two grounds, viz.,

(*t*) *Hamilton v. Chaine*, 7 Q. B. D. 1; and on app. 319.

(*u*) 19 Ch. D. 98.

(1) because the £25 was not paid to the assignor; and (2) because even if the £25 were taken to have been paid to the assignor, it was not paid "at or before the execution" of the deed, when it was expressed to have been so paid in the bill of sale. In delivering judgment, Jessel, M.R., said, "the consideration was so much money then paid by the lender to the borrower, and a covenant or agreement by him to pay a further sum at a future day to some one else, and that ought to have been stated in the deed. On that ground therefore it appears to me that the consideration is not stated in the deed as required by the Act." Thus it will be seen that the exact nature of the consideration must be set forth. If part be payable at one time and part at another, the money must be stated in the bill of sale to be so payable.

This case was followed by that of *Ex parte Firth, Re Cowburn (v)*, where on similar grounds the Court of Appeal held that where the amount of the expenses incident to the preparation of the bill of sale is deducted from the sum expressed in it to be the consideration, and only the balance is really paid to the grantor, the consideration is not truly stated within the Bills of Sale Act, 1878. This case is important also for the reference made by the Court to the decisions of the Court of Appeal in *Ex parte National Mercantile Bank (x)*, and *Ex parte Challinor (y)*. For their lordships held that these two decisions must be treated as binding authorities only so far as they decide that if part of the consideration stated in a bill of sale is by the grantor's direction, given at the time of the execution of

(v) 19 Ch. D. 419.
(x) 15 Ch. D. 42.
(y) 16 Ch. D. 260.

the deed, applied in satisfying one of his then existing debts, the money so paid may be properly stated in the deed to be then paid to him.

In the case of *Exp. Bolland, In re Roper* (z), the purchaser of a leasehold brewery mortgaged immediately after the assignment the brewery and stock-in-trade to the vendor as a security for £2000, the unpaid balance of the purchase-money. The mortgage deed was registered as a bill of sale, and was expressed to be made in consideration of £2000 paid by the vendor to the purchaser "immediately before the execution of these presents." No money was in fact paid by the vendor, the £2000 being the unpaid balance of the purchase-money of the brewery. The purchaser having filed a liquidation petition, the trustee in the liquidation claimed to have the mortgage set aside as against him in respect of the personal chattels comprised therein, on the ground that the consideration was not truly stated. The Court of Appeal, however, held, affirming the decision of the Court below, that the consideration was properly stated.

The effect of the consideration money stated to be paid at the execution in the bill of sale having been previously paid by instalments is shewn in *Ex parte Berwick, Re Young & Co.* (a). In that case the consideration was in the bill of sale stated to be "the sum of £65 now paid" by the grantee to the grantor. As a matter of fact the £65 was advanced by instalments. Of these the first was paid on the 16th April, 1877, and the last on 16th October, 1878.

(z) W.N. 1882, p. 127.

(a) 43 L. T. 576.

Under these circumstances Baon, C.J., held the consideration not to be truly stated, all the instalments having been previously advanced.

As pointed out above, the receipt indorsed on a bill of sale is not part of the bill of sale. If the consideration be not correctly stated in the bill of sale, but correctly in the receipt, the latter cannot be referred to to rectify the former, but the bill will be altogether void (*b*).

By the 15th section of the Bills of Sale Act, 1882 (*c*), the 8th section of the Act of 1878 is repealed in the case of bills of sale registered after 1st November, 1882, the date fixed for the new Act to come into operation. But its provisions as to the consideration are in effect re-enacted by the 8th section of the Act of 1882 (*c*), which provides that "every bill of sale . . . shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein." The only difference between the two enactments is that the 8th section of the earlier statute only avoids unregistered bills of sale in certain cases only; while the 8th section of the Act of 1882 avoids *all* unregistered bills of sale.

SECT. III. THE ATTESTATION.

Before the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), came into force, *i.e.*, previously to 1st January, 1879, attestation was in no instance essential to the validity of a bill of sale. Even now attestation is only necessary when the bill is required to be registered. The following is the provision contained in the Act of 1878 with regard

(*b*) *Exp. Charing Cross Bank*, 16 Ch. D. 35, *ante*, p. 37.
(*c*) 45 & 46 Vict. c. 43, s. 8.

to attestation : "The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor" (d).

It will be seen that the Act does not require the attesting solicitor to be certificated. Consequently managing clerks, who have been admitted solicitors, but who have not taken out their certificates, can attest bills of sale (e). If the grantee of the bill be a solicitor, he cannot act as the attesting solicitor (f). But there is nothing in the Bills of Sale Act, 1878, to prevent a solicitor, who acts for both grantor and grantee, attesting the bill (g), or even a solicitor who acts merely for the grantee (h).

The attestation must contain a statement that the attesting solicitor explained the effect of the bill of sale to the grantor before he executed it. Though this statement must be contained in the bill of sale, it is not necessary to the validity of the bill of sale under the Act of 1878 that any such explanation of the effect of the bill should in fact have been given to the grantor (i). Further it is not necessary that such a statement should be contained in the statutory affidavit filed on the registration of the bill of sale (j).

Attestation is only essential in the case of bills of sale required to be registered under the Bills of Sale Act, 1878.

(d) 41 & 42 Vict. c. 31, s. 10, sub-s. 1.

(e) *Hill v. Kirkwood*, 42 L. T. 105 : 28 W. R. 358.

(f) *Seal v. Claridge*, 7 Q. B. D. 516.

(g) *Vernon v. Cooke*, 49 L. J. C. P. 767.

(h) *Penwarden v. Roberts*, 9 Q. B. D. 137.

(i) *Exp. National Mercantile Bank, Re Haynes*, 15 Ch. D. 42.

(j) *Exp. Bolland, In re Roper*, W. N. 1882, p. 127.

Registration is not required to make a bill valid as between grantor and grantee. It follows, therefore, that a bill of sale will not be void as against the grantor merely on the ground that it was not attested by a solicitor, though it will be as against an execution creditor of the grantor, or as against his trustee in bankruptcy or liquidation (*k*).

An affidavit of "its due execution and attestation" must, under the Bills of Sale Act, 1878, be filed with a registered bill of sale (*l*). It has been held that this affidavit must state *inter alia* that the bill of sale was "duly attested" by the attesting solicitor, *i.e.*, that he was present and witnessed the due execution. An omission to state in the affidavit that the attesting witness was present will invalidate the registration as against an execution creditor (*m*). An affidavit, therefore, which merely verifies the signature of the solicitor to the attestation clause, and describes his residence and occupation, is defective, and will invalidate the registration (*n*). But, as pointed out above, the affidavit need not contain a statement that the attesting solicitor explained the effect of the deed to the grantor before its execution (*o*).

After the Bills of Sale Act, 1882, comes into operation, *i.e.*, after 1st November, 1882, it will no longer be necessary for a bill of sale either to be attested by a solicitor or to be explained to the grantor by the attesting witness. It will be sufficient if the execution of the bill of sale be

(*k*) *Davis v. Goodman*, 5 C. P. D. 128.

(*l*) 41 & 42 Vict. c. 31, s. 10, sub-s. 2.

(*m*) *Ford v. Kettle*, 9 Q. B. D. 139.

(*n*) *Sharpe v. Birch*, 8 Q. B. D. 111; *Ford v. Kettle*, 9 Q. B. D. 139.

(*o*) *Exp. Bolland, In re Roper*, W. N. 1882, p. 127.

attested by one or more credible witness or witnesses not being a party or parties thereto (*p*).

SECTION IV. STAMPS ON BILLS OF SALE.

A bill of sale cannot be filed in any Court, unless the original, duly stamped, is produced to the proper officer (*q*). The stamps vary in amount, according to the value of the consideration for the sale. In the case of an absolute bill of sale, the following is the list of stamps to be affixed :--

If the value of the consideration for the sale

does not exceed £5 .. £0 0 6
exceeds £5, but not £10 .. 0 1 0
,, 10 ,, 15 .. 0 1 6
,, 15 ,, 20 .. 0 2 0
,, 20 ,, 25 .. 0 2 6
,, 25 ,, 50 .. 0 5 0
,, 50 ,, 75 .. 0 7 6
,, 75 ,, 100 .. 0 10 6
,, 100 ,, 125 .. 0 12 6
,, 125 ,, 150 .. 0 15 0
,, 150 ,, 175 .. 0 17 6
,, 175 ,, 200 .. 1 0 0
,, 200 ,, 225 .. 1 2 6
,, 225 ,, 250 .. 1 5 0
,, 250 ,, 275 .. 1 7 6
,, 275 ,, 300 .. 1 10 0
,, 300, then for every £50, or any fractional part of £50, of such amount or value 0 5 0

(*p*) 45 & 46 Vict. c. 43, s. 10.

(*q*) 33 & 34 Vict. c. 97, s. 57, the Stamp Act, 1870.

Conditional bills of sale are liable to stamp duty in the following manner :—

I. If they are the only or principal, or primary security for

The payment or repayment of money,

not exceeding £25 .. £0	0	8
exceeding £25, and not exceeding £50 .. 0	1	3
,, 50 ,, 100 .. 0	2	6
,, 100 ,, 150 .. 0	3	9
,, 150 ,, 200 .. 0	5	0
,, 200 ,, 250 .. 0	6	3
,, 250 ,, 300 .. 0	7	6
,, 300, then for every £100, or fractional part of £100 0	2	6

II. If a collateral or auxiliary, or additional or substituted security, or by way of further assurance for the above mentioned purpose, where the principal or primary security is duly stamped :—

for every £100, or fractional part of £100, } 6d.
of the amount transferred or assigned }

The stamps on bills of sale must be impressed, and not adhesive. However, the registration of a bill of sale will not be avoided merely because the stamp is, at the date of registration, not of sufficient amount, provided the proper stamp be afterwards affixed (*r*). Bills of sale should be stamped before execution, but may be stamped afterwards on payment of a penalty of £10, in addition to the amount of the requisite stamp. Interest also at 5 per cent. per

(*r*) *Bellamy v. Saull*, 4 B. & S. 265; 32 L. J. Q. B. 366.

annum is chargeable in cases in which the unpaid duty exceeds £10, from when the bill of sale was executed up to the time when the interest becomes of same amount as the duty unpaid (*s*).

(e) 33 & 34 Vict. c. 97, sect. 15.

CHAPTER V.

REGISTRATION OF BILLS OF SALE.

SECTION I. TIME FOR AND EFFECT OF REGISTRATION.

SINCE 1st January, 1879, it has been absolutely necessary to register all bills of sale within seven days from their execution (*a*). Previously twenty-one days were allowed by the Bills of Sale Act, 1854. Bills of sale are also required to be attested, and to set forth the consideration for which they were granted (*b*). Should any one of these essentials not be complied with, the bill of sale will, though binding on the grantor of it, afford no security to the grantee in the event of grantor's bankruptcy or of any process being issued against him. For the bill of sale will be absolutely void as against the trustee or assignee in bankruptcy or liquidation, or under any assignment of the grantor's estate. It will also be void as against a sheriff's officer or other person seizing any chattels comprised in it; and in addition thereto, as against all persons on whose behalf writs of execution against the property of the grantor have been issued. However, the bill of sale is only void as regards the goods or chattels, included therein, which are in the possession

(*a*) 41 & 42 Vict. c. 31, s. 8; 45 & 46 Vict. c. 43, s. 8.

(*b*) See ch. iv. sects. ii. and iii.

or apparent possession of the grantor of the bill of sale at or after the filing of the bankruptcy or liquidation petition, or the execution of the assignment or writ, and after the expiration of seven days from the granting of the bill (c).

Besides the shortening of the time allowed for registration, the law as it now is differs from that in force before 1st January, 1879, in two important particulars. For while under the earlier law the bill of sale did not require to be attested, or to shew on its face the consideration for which it was given, now both attestation and the insertion of the consideration are essential to its validity as against the various classes of persons enumerated above (d).

When the seven days allowed for the registration of bills of sale expire on a Sunday or other day on which the registrar's office is closed, the bill may be registered on the Monday or the next following day on which the office is open (e). It would appear on the analogy of warrants of attorney, that in computing the seven days, the day of execution is to be excluded (f). Therefore, a bill of sale given on the first day of the month can be filed on or before the eighth. Any judge of the High Court has power to extend the time for registration when the omission to register was purely accidental (g).

The precise effect of registration on a bill of sale is merely to take away its invalidity in certain cases. It gives the bill no additional inherent authority. A bill in itself fraudulent or otherwise bad will not be made valid

(c) See ch. vi.

(d) See ch. iv. sects. ii. and iii.

(e) 41 & 42 Vict. c. 31, s. 22.

(f) *Williams v. Burgess and another*, 12 A. & E. 635.

(g) 41 & 42 Vict. c. 31, s. 14.

by registration (*h*). An unregistered bill of sale is always binding not only on the grantor and his assigns, but also on any creditor who knew of and assented to its being given. In fact, it is valid as against everybody, with the two exceptions of creditors who did not assent to its execution, and of *bonâ fide* purchasers for valuable consideration of the goods or chattels comprised in it. Thus it was held in *Davis v. Goodman* (*i*) that an unregistered bill of sale is after any lapse of time from its execution valid as between the parties to it.

So, also, if the grantor of an unregistered bill of sale has since died insolvent, and his estate is being administered, the bill of sale will be good as against the unsecured creditors, and the rules in bankruptcy will not apply (*k*). Again, if the unregistered bill be given by a company, it will be good as against the liquidator on the winding-up of the company (*l*).

To make an unregistered bill of sale void, it will be seen from what has been stated above that the property included in it must be "in the possession or apparent possession" of the grantor. It will generally be a question of fact for the jury to decide whether or not the grantor has parted with the possession of the goods to the grantee. The following case affords a good illustration of what will constitute "possession or apparent possession." A. granted a bill of sale over certain goods to B., but afterwards delivered them to C. as a bailee for himself. B. did not register the bill within the time required. How-

(*h*) *Darrill v. Terry*, 6 H. & N. 807; 30 L. J. Ex. 355; *Exp. Collins, Re Lees*, L. R. 10 Ch. 367; 44 L. J. Bkcy. 78.

(*i*) 5 C. P. D. 128; 49 L. J. C. P. 344.

(*k*) *Re Knott*, 7 Ch. D. 549, n.

(*l*) *Re Marine Mansions Co.*, L. R. 4 Eq. 601; 37 L. J. Ch. 113.

ever, B. requested C. to deliver up the possession of the goods to himself. C. refused to do so. The Court decided that, in spite of B.'s demand for the possession of the goods, the goods must be considered as being still in the possession of A., the grantor (*m*). In another case two partners in trade, A. and B., by an unregistered bill of sale mortgaged their trade fixtures and loose chattels to C., and afterwards A., on the partnership being dissolved, assigned his moiety of the fixtures, &c., subject to the mortgage, to B. B. soon afterwards filed a liquidation petition, he being in sole possession of the mortgaged property. The Court decided with respect to the moiety of the trade fixtures assigned by A. to B., that the mortgage was not void on account of non-registration. On the other hand it was held that the whole of the loose chattels passed by virtue of the reputed ownership clause to the trustee in the liquidation (*n*). The chattels are in the "apparent possession" of the grantor so long as they continue on any premises in his actual occupation, or are used and enjoyed by him anywhere, notwithstanding that formal possession of them may have been taken by or given to any other person. The doctrine of possession and apparent possession will be found more fully discussed in Chapter VI.

Till the expiration of the seven days, the bill of sale is good though not registered. Therefore, if within the seven days the grantee take and retain possession of the goods, he will acquire a good title to them. The fact of the grantor having meanwhile become bankrupt, or of an

(*m*) *Ancona v. Rogers*, 1 Ex. D. 285.

(*n*) *Exp. Brown, Re Reed*, 9 Ch. D. 389; 48 L. J. Bkey. 10.

execution creditor having seized the goods, will not affect his title. The decision of the Court in *Banbury v. White* (o) shews that the mere fact of the holder, when intending to comply with the Act, having filed documents not in conformity with it will not avoid the bill of sale if the chattels assigned are taken in execution within seven days. In delivering judgment in the case of *Ex parte Jackson, Re Bowes* (p) it was laid down by Thesiger, L.J., that if the grantee obtain possession of the chattels before the commission of an act of bankruptcy by the grantor, though after the expiration of the seven days, his unregistered bill of sale will be good as against the trustee in bankruptcy of the grantor. The same rule will apply as against an execution creditor if the grantee has taken possession before the former has seized the goods in execution, though the seven days have expired.

The mere fact of an execution creditor having, before his debt was contracted, actual notice of the existence of a bill of sale, which was not registered within the seven days, will not deprive him of his right to raise the objection that the bill of sale has not been registered. The bill will, in spite of the notice, be fraudulent and void as against him (q).

The case of *Chapman v. Knight* (r) is an authority to shew that a registered bill of sale, given by a person out of possession of the goods assigned, and deriving his title to them from a grantee under an unregistered bill of sale, is invalid as against an execution creditor. Thus non-regis-

(o) 2 H. & C. 300; 32 L. J. Ex. 258.

(p) 29 W. R. 253, 257.

(q) *Edwards v. Edwards*, 2 Ch. D. 291; 45 L. J. Ch. 891.

(r) 5 C. P. D. 308.

tration of a bill of sale will affect all titles derived under the bill of sale. In the case cited the sheriff sold some goods seized in the defendant's house under a *fit. fa.*, giving to the purchaser an inventory of the goods. At the foot of the inventory was a receipt by the sheriff's officer for the price of the goods. The inventory and receipt were not registered as a bill of sale under the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31). The purchaser five days after the sale settled the goods on the debtor's wife to her separate use. The settlement was also unregistered. A subsequent assignment by the debtor's wife by a bill of sale, which was registered, was held void, the *ratio decidendi* being that the two previous assignments had not been registered.

The provisions contained in the 8th section of the Bills of Sale Act, 1878, are repealed by the 15th section of the Bills of Sale Act, 1882. They are, however, re-enacted, with certain additions, by the 8th section of the latter Act, which provides that "every bill of sale shall be duly attested, and shall be registered under the principal Act [*i.e.*, the Bills of Sale Act, 1878 (*s*)] within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would, in the ordinary course of post, arrive in England, if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein" (*t*). This enactment will not apply to bills of sale duly registered before the commencement of the Act, *i.e.*, before

(*s*) 41 & 42 Vict. c. 31.

(*t*) 45 & 46 Vict. c. 43, s. 8.

the 1st November, 1882, so long as the registration thereof is not avoided by non-renewal or otherwise (*u*). It should be here observed that while the Act of 1878 avoided unregistered bills of sale in certain cases only, the Act of 1882 avoids *all* unregistered bills of sale, without any exception.

By the new enactment the necessity of bills of sale being registered within seven days is preserved. Additional provisions have been, for the first time, introduced respecting the registration of bills of sale executed out of England. After the 1st November, 1882, when the statute is to come into operation, bills of sale executed out of England will have to be registered within seven clear days after the arrival of the first post from the place where they are executed. If these various provisions as to registration be not complied with, the bill of sale is under the Act of 1882 to be absolutely void except as against the grantor. While, under the Act of 1878, it will be remembered non-registration only made the bill void as against certain specified classes of persons (*x*).

SECTION II. DUPLICATE BILLS.

All duplicate bills of sale are now absolutely void. Duplicate bills of sale were formerly resorted to with the object of avoiding the necessity of registration by means of the following device. Just immediately before the expiration of the period allowed for the registration of the bill of sale a new bill of sale was substituted in its

(*u*) 45 & 46 Vict. c. 43, s. 3.
(*x*) See p. 47.

stead. Then just before the time when the second bill should have been registered, a third bill was drawn up and executed in its place. By this means the law, requiring registration as essential to the perfect security of bills of sale, was effectually defeated.

It will now, however, be practically useless to have recourse to this or any similar device. For the Bills of Sale Act, 1878, expressly provides that if a second bill of sale be executed within seven days from the execution of an unregistered bill of sale, and include the same chattels or some of them, then if the second bill be given as a security for the same debt or for part of it it shall be absolutely null and void (*y*). Consequently, the grantee would have no right of action on it against the grantor. However, it is only to be void to the extent to which it is security for the same debt, or to which it includes the same goods. A subsequent bill of sale, given merely to correct some material error in a prior bill, and not for the sole purpose of avoiding registration, will be valid, and in no way affected by this enactment.

The enactment relating to duplicate bills does not apply to the case of a second bill of sale executed after the expiration of the seven days (*z*). The words in the 9th section "or on the expiration of" the seven days are mere surplusage.

(*y*) 41 & 42 Vict. c. 31, s. 9.

(*z*) *Carrard v. Meek*, 50 L. J. Com. Law, 187.

SECTION III. MODE OF REGISTERING.

THE following four rules are those now in force with regard to the attestation and registration of bills of sale:

I. The execution of every bill of sale is to be attested by a solicitor of the Supreme Court (*a*).

II. The attestation must state that before the execution the attesting solicitor explained to the grantor the legal effect of the bill of sale.

The law relating to attestation of bills of sale has already been treated of, and will be found in chap. iii. section iii.

III. The bill of sale with any schedule or inventory annexed to it, or referred to in it, is to be presented to the registrar within seven clear days of its execution. A true copy of the bill of sale and of the schedule or inventory, and of every attestation of its execution, must be filed with the registrar at the same time.

The case of *Gardnor v. Shaw* (*b*) shews that a mere clerical mistake not likely to mislead will not prevent a copy of the bill of sale being a "true copy." For instance, in that case spelling inaccurately the surname of the grantee as Gardner instead of Gardnor was held of no importance. The Court, however, intimated that had the error been in the name of the grantor, a decision to a contrary effect would have been given.

In addition to the true copy an affidavit must also be filed with the registrar within seven days from the execu-

(*a*) If the bill be registered after 1 November, 1882, the attesting witness need not be a solicitor. See ch. iv., sect. iii.

(*b*) 19 W. R. 753.

tion of the bill of sale. The affidavit is required to state the following facts, viz. (1) the date of the execution of the bill of sale; (2) its due execution and attestation; and (3) a description of the residence and occupation of the grantor and of the attesting witnesses. Every affidavit requisite for the registration of a bill of sale may be sworn either before any one of the masters of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature (c). If the partner of the attesting solicitor be a commissioner, the affidavit can be sworn before him (d). Wilfully making or using any false affidavit for the purpose of obtaining the registration of a bill of sale is punishable as perjury (e).

IV. If the bill of sale be given subject to any defeasance or condition, or to any declaration of trust not contained in it, such defeasance, condition, or declaration is to be deemed part of the bill of sale, and to be written on the same paper or parchment as the bill of sale itself before the registration. It must, besides, be truly set forth in the copy filed. Should either of these requirements be omitted, the registration of the bill of sale will be void (f).

A "defeasance or condition" means something which diminishes, defeats, or prejudices the rights of the grantee for the benefit of the grantor. It will not include a collateral agreement which merely gives the grantee

(c) 41 & 42 Vict. c. 31, s. 17; Order LXA, r. 9, R. S. C. April 1880.

(d) *Vernon v. Cooke*, 49 L. J. C. P. 767.

(e) 41 & 42 Vict. c. 31, s. 17.

(f) *Ib.* s. 10.

benefits in addition to those conferred by the bill of sale itself (g). In *Exp. Collins, Re Lees* (h), a bill of sale of chattels, with power to take immediate possession, was stated to be made in consideration of a loan of £130, to be repaid by instalments, the whole to become payable on default in paying any instalment. Only £100 was really advanced, the grantee, who was a money-lender, charging the £30 by way of bonus and interest. At the execution of the bill of sale the grantor signed a memorandum to the effect that the £30 was to be paid in full, even though the money secured were repaid, or the grantee's rights under the bill of sale were enforced, before the expiration of the time fixed for payment. The bill of sale was registered, the memorandum was not. The Court of Appeal decided that the memorandum was not a condition, and that its not being registered did not affect the validity of the bill. So a verbal agreement that the grantee would not register the bill of sale, and that the grantors should on that account pay the grantee a larger bonus than he would otherwise have demanded, has been held to be neither a defeasance nor a condition (i).

The terms "declaration of trust" will only cover trusts declared in favour of the grantor of the bill of sale. If no such trusts in favour of the grantor exist, the grantee need not, even though he might be treated in equity as a mere trustee, insert in the bill the name of the person who really advances the money (k). The object of the Act is to prevent creditors being defrauded

(g) *Exp. Odell, Re Walden*, 10 Ch. D. 78.

(h) L. R. 10 Ch. 367; 44 L. J. Eqcy. 78.

(i) *Exp. Popplewell, Re Storey*, W. N. 1882, p. 91 (C. A.).

(k) *Robinson v. Collingwood*, 17 C. B. N. S. 777; 34 L. J. C. P. 18.

by sham bills of sale, which do not pass the whole interest of the grantor, though they appear on the face of them to do so.

SECTION IV. THE DESCRIPTION.

By the 3rd of the rules relating to registration of bills of sale (*l*), an affidavit containing, *inter alia*, a description of the residence and occupation of the grantor of the bill of sale, and also of every attesting witness, has to be filed with the registrar at the same time as the bill of sale itself. It is important to remember that accuracy as to the name of the grantor is not required, provided he can be identified. Thus an error in the Christian name of the grantor will be immaterial (*m*). It is now proposed to consider what will amount to a sufficient description of residence and occupation within the meaning of this rule.

With respect to the description of the residence of the grantor, the rule is that it must be precisely correct. However, there is an important modification of this rule. For a mere erroneous addition will not render insufficient a description otherwise sufficient, unless it be calculated to mislead creditors. Acting on this principle the Court of Queen's Bench decided in one case that a bill of sale, in which a street in Blackfriars was said to be in the county of Middlesex instead of in the city of London, was not thereby made invalid (*n*). But the bill of sale will be invalidated if the misdescription be calculated to mislead creditors. Thus, where the number of the house in the

(*l*) *Ante*, p. 55.

(*m*) *Exp. McHattie, Re Wood*, 10 Ch. D. 398.

(*n*) *Hewer v. Cox*, 3 E. & E. 428.

street was incorrectly stated, the description was held to be insufficient (*o*). There are two recent cases on the subject. In one a farmer, whose real name was "Joseph Wood," but who had assumed the name of "Joseph Albert Wood," and who was known to his creditors by that name, executed a bill of sale, in which he was described as "Joseph Wood of Lache Hall Farm in the county of Chester, Farmer." The affidavit filed on the registration of the bill of sale contained the same name and description of the grantor. Lache Hall Farm was situate a short distance from Chester, and was really within the county of the city of Chester. There was no evidence of there being any other farm bearing the same name in the county of Chester. It was decided that the misdescription in this case did not invalidate the bill of sale (*p*). In the second case alluded to a house was described as being in "Acton, in the city of London." Acton is in Middlesex; there is no Acton in the city of London. This was also held a sufficient description (*q*). The rule to be deduced from the cases is that though the description of the residence need not be absolutely correct, yet it must be substantially accurate, so that it may be easily identified.

If the grantor has several places of business, or more than one occupation, all of them need not be inserted in the affidavit. But the principal occupation or place of business should be selected (*r*). Thus in the case cited a person who was both a farmer and a bill discounter,

(*o*) *Murray v. Mackenzie*, L. R. 10 C. P. 625; 44 L. J. C. P. 313.

(*p*) *Exp. McHattie, Re Wood*, 10 Ch. D. 398.

(*q*) *Blount v. Harris*, 4 Q. B. D. 603; and see also *Cooper v. Ibbsen*, 44 L. T. 309.

(*r*) *Exp. National Mercantile Bank, Re Haynes*, 15 Ch. D. 42; but see *Wallis v. Smith*, W. N. 1882, p. 77.

was held to be sufficiently described as farmer, without the words "bill discounter" being added (*s*).

If the grantor of the bill of sale has two addresses, the one being his place of business and the other his private residence, it should be expressly mentioned in the bill of sale that the goods or chattels at both places are to pass to grantee, if such is the intention of the parties. If the grantor has changed his residence or occupation between the date of the bill of sale and the date of his affidavit, his residence and occupation at the latter date must be inserted (*t*).

The description of the occupation of the grantor must also be accurate. He must not be merely described as "gentleman" or "esquire" when he has some office or business. Thus it has been decided that the description of an actor, who is also lessee and manager of a theatre, or of a merchant as "esquire," will not be sufficient (*u*). So a clerk in a Government office should be described as "a clerk in the (Foreign, India, &c.) office" (*x*). To give one more illustration of the rule, the designation of a solicitor or of a solicitor's clerk as "gentleman," will not be sufficient (*y*). If the grantor has no permanent office or business, he can be described in the affidavit either as "of no occupation," or as "gentleman" (*z*). So if the grantor has retired from business, he can be correctly

(*s*) *Exp. National Mercantile Bank, Re Haynes*, 15 Ch. D. 42; but see *Wallis v. Smith*, W. N. 1882, p. 77.

(*t*) *Button v. O'Neill*. 4 C. P. D. 354.

(*u*) *Exp. Hooman, Re Vining*, L. R. 10 Eq. 63; *In re O'Connor*, 27 L. T. (O.S.) 27.

(*x*) *Allen v. Thompson*, 1 H. & N. 15; 25 L. J. Ex. 249.

(*y*) *Tuton v. Sanoner*, 3 H. & N. 280, 27 L. J. Ex. 293; *Dryden v. Hope*, 9 W. R. 18; *Beales v. Tenant*, 29 L. J. Q. B. 188.

(*z*) *Sutton v. Bath*, 3 H. & N. 382; *Smith v. Cheese*, 1 C. P. D. 60.

l escribed in either of these modes, though he occasionally collects rents or debts for another person. Merely inserting the previous occupation of the grantor, without adding his present, will not be sufficient. For instance, in a recent case, where the grantor was described as "until lately a commercial traveller," without any further description being added, it was held insufficient (a). But where the grantors (father and son) were described as mantle manufacturers, carrying on business together under a specified firm, but at date of the execution of the bill of sale the partnership was dissolved, the business being carried on by the father alone, the son acting as his clerk, and the property assigned belonged to the father alone, who had alone filed a liquidation petition, it was held that there was no such misdescription of the grantors as to affect the validity of the registration, because (1) the son, not being a bankrupt, any misdescription of him was immaterial; and (2) as to the father, the statement that he was in partnership with his son was mere surplusage, and not misleading (b). It has been decided (c) that if a son has the same name as his father, it is not necessary to insert after his name the word "junior" or "younger."

If a bill of sale be executed by two grantors, the case of *Hooper v. Parmenter* (d) shews that the residence and occupation of both must be inserted in the affidavit, though only one of them is in possession of the goods.

The same rules will apply with respect to the descrip-

(a) *Castle v. Downton*, 5 C. P. D. 56; 49 L. J. C. P. 6.

(b) *Exp. Popplewell, Re Storey*, W. N. June 1882 (C. A.), p. 91.

(c) *Foulger v. Taylor*, 1 L. T. N. S. 57.

(d) 10 W. R. 648.

tion of the occupation and residence of the attesting witness. For instance, in the case of *Smith v. Cheese* (*e*), the attesting witness to a bill of sale was described in the affidavit as "gentleman." Originally the witness had been a proctor's managing clerk, but had ceased to be so for six years. Since then he had lived on an allowance made him by a relative. On a few occasions he had, however, collected debts and written letters for other persons; and he had also drawn four bills of sale, but he had no regular occupation. The Court decided that the description of him in the affidavit as "gentleman" was sufficient. But as a general rule if the description of the occupation and residence of the attesting witness be not correct, the bill of sale will be invalidated (*f*). However, his occupation and residence need not be stated in the attestation clause of the bill of sale; though it is usual and certainly advisable to include them therein. If there be more than one attesting witness, they all must be properly described in the affidavit, otherwise the bill of sale will be void (*g*).

If the description in the bill of sale itself of the residence or occupation of the grantor, though imperfect, be correct as far as it goes, the bill of sale will not be invalidated thereby, provided the description in the affidavit be correct, and not contradictory to that in the bill. Of course, if the description in the bill of sale were incorrect, the bill of sale and the affidavit would then contradict each other, and the bill of sale be consequently invalidated.

(*e*) 1 C. P. D. 60.

(*f*) *Tuton v. Sanoner*, 3 H. & N. 280; *Brodick v. Scale*, L. R. 6 C. P. 98.

(*g*) *Nicholson v. Cooper*, 27 L. J. Ex. 393; *Pickard v. Marriage*, L. R. 1 Ex. D. 364; 45 L. J. Ex. 594.

It has been decided, on the other hand, that though the description of the grantor's residence or occupation be insufficient in the affidavit, yet if the description in the bill of sale be referred to, the defect will be cured (*h*). But if the residence or occupation be misdescribed in the affidavit, it will be insufficient, though the bill of sale may contain a correct description (*i*). The case of *Murray v. Mackenzie* (*k*) is an authority in point. The grantor was there described in a bill of sale as "W. C. of No. 37, Malpas Road, Deptford," and the attesting witness as "E. W., 2, South Terrace, Hatcham Park Road." In the affidavit the deponent stated that "the said W. C. resided at No. 73, Malpas Road, Deptford," and that he himself resided at "3, South Terrace, Hatcham Park Road." The misdescription was held to invalidate the bill of sale.

In the case of a bill of sale given by a trading company, no description, beyond its name, of its residence or occupation need be inserted either in the affidavit or in the bill of sale itself. Again, there is no necessity to insert the residences or occupations of its directors, who sign the bill of sale as directors, and not as attesting witnesses (*l*). A bill of sale given by a trading company will not be *ultra vires* merely because the articles of association do not expressly authorize a bill of sale being given by the company.

The case of *Roe v. Bradshaw* (*m*) is an authority to shew that if the description of the residence and occupation of

(*h*) *Jones v. Harris and another*, 41 L. J. Q. B. 6; L. R. 7 Q. B. 157.

(*i*) *Brodick v. Scale*, L. R. 6 C. P. 98.

(*k*) L. R. 10 C. P. 625.

(*l*) *Shears v. Jacob*, L. R. 1 C. P. 513; 35 L. J. C. P. 241; *Defell and another v. White*, L. R. 2 C. P. 144; 36 L. J. C. P. 25.

(*m*) L. R. 1 Ex. 106; 35 L. J. Ex. 71.

the grantor be not positively sworn to in the affidavit, but merely "to the best of the belief" of the deponent, it will be sufficient, if not contradicted.

SECTION V. PRIORITY OF BILLS OF SALE.

If several bills of sale, comprising the same chattels or a portion of them, be given by the owner to two or more persons, the various bills of sale will have priority according to the respective dates on which they were registered (*n*). Accordingly it has been held that a bill of sale attested and registered in accordance with the provisions of the Bills of Sale Act, 1878, will take priority over one that is earlier in point of time but unregistered, in respect of any chattels which may be comprised in both (*o*).

In *Lyons v. Tucker* (*p*) certain chattels were assigned to the defendant by a bill of sale, which was not registered. Subsequently the grantor gave another bill of sale, comprising the same chattels, to the plaintiff. The plaintiff duly registered his bill of sale. The defendant next took possession of the chattels under his bill of sale, and the plaintiff thereupon brought an action against him for conversion. The Court of Appeal, reversing the decision of the Queen's Bench Division, gave judgment for the plaintiff, on the ground that the registered bill of sale took priority over the unregistered one. The Lords Justices at the same time laid it down that it is immaterial whether the grantee under the registered or unregistered bill of sale is in possession of the goods.

(*n*) 41 & 42 Vict. c. 31, s. 10.

(*o*) *Connelly v. Steer*, 7 Q. B. D. 520.

(*p*) 7 Q. B. D. 528.

A transfer or assignment by the grantee of a registered bill of sale does not require to be registered (*q*).

SECTION VI. RENEWAL OF REGISTRATION.

The registration of all bills of sale must be renewed once at least every five years (*r*). Thus a bill of sale registered on 1st January, 1882, must be registered anew on or before the 31st December, 1886. Should the registration of the bill not be renewed within the time allowed, the registration will become void.

The registration is renewed by merely filing with the registrar an affidavit, mentioning the date of the bill of sale and of its last registration, and the names, residences and occupations of the parties to it, and also stating that the bill of sale is a subsisting security (*s*).

A transfer or assignment of the bill of sale will not of itself necessitate a renewal of the registration (*t*).

The affidavit referred to above can be drawn up in the form given in Schedule A in the Appendix to the Bills of Sale Act, 1878 (*u*).

SECTION VII. THE DUTIES OF THE REGISTRAR, AND THE RECTIFICATION, INSPECTION, &c. OF THE REGISTER.

The Bills of Sale Act, 1878, provides that the masters attached to the Queen's Bench Division of the High Court of Justice shall be the registrar for the purposes of the Act,

(*q*) 41 & 42 Vict. c. 31, s. 11.

(*r*) *Ib.* ss. 11, 23.

(*s*) *Ib.* s. 11.

(*t*) *Ib.*

(*u*) See p. 115.

and any one of them may perform all or any of the duties of the registrar of bills of sale (*x*). The functions of the master, in his capacity of registrar, are purely ministerial, and not judicial. Consequently he must receive and file the affidavit, required to be filed along with a copy of the bill of sale, although it be inaccurate or insufficient (*y*). Any exception which can be taken to the validity of the affidavit must be taken before the Court, and not before the master. In one case the affidavits presented at the office of the registrar to obtain the renewal of the registration of two bills of sale, stated the original registration of the two bills to have been made respectively "on or about the 6th April, 1858," and "on the 31st day of July, 1861." In fact, the former was registered on the 7th April, 1858; the latter on the 30th July, 1861. The master refused to file the affidavits on the ground that they did not state the correct dates. The Court of Queen's Bench, however, ordered the master to file the affidavits, holding his duty to be merely ministerial (*z*).

The registrar is required to keep a register, and on any bill of sale or copy of it being filed, to enter in it the name, residence or occupation of the grantor and certain other particulars. A similar entry in the register has to be made on the registration of any affidavit of renewal, with the addition of the date and number of the last previous entry relating to the same bill. Another of the duties of the registrar is to keep an index of the names of the various grantors of registered bills of sale.

If the registration within the prescribed time of a bill

(*x*) 41 & 42 Vict. c. 31, s. 13.

(*y*) *Needham to Johnson, Taylor to Bentley*, 8 B. & S. 190.

(*z*) *Ib.*

of sale or of an affidavit of renewal be accidentally or inadvertently omitted, or if the name, residence or occupation be omitted or misstated, any judge of the High Court of Justice can, if satisfied that the omission or misstatement was due to accident or inadvertence, order it to be rectified. This can be done by inserting in the register the true name, residence, or occupation, or by extending the time allowed for the registration. However, the judge can make the rectification subject to any terms and conditions as to any security to be given, or as to any other matter, such as giving notice by advertisement (a).

A purely clerical error in the bill of sale will generally be rectified, and the bill of sale will not be invalidated thereby. Thus, if a wrong date be inserted in the bill of sale, but the affidavit affords the means of correcting it, so that no creditor could be misled by it, the error will be deemed a clerical one, and will not invalidate the bill of sale. Similarly, where the bill of sale was described in the affidavit as executed on the 17th February, 1806, instead of 1876, it was held a merely clerical error, and not to invalidate the bill (b). But any important error in the affidavit or in the copy of the bill of sale will invalidate the instrument.

Any person may have an office copy or extract of any registered bill of sale or of the affidavit filed therewith, or of any registered affidavit of renewal, on payment of a fee (c). All such copies are to be admitted as *prima facie* evidence of the bill of sale or affidavit, and of the fact and date of registration (c). Also on payment of a small fee

(a) 41 & 42 Vict. c. 31, s. 14.

(b) *Lamb v. Bruce*, 45 L. J. Ex. 538.

(c) 41 & 42 Vict. c. 31, s. 16.

any person may at all reasonable times search the register and every registered bill of sale (*d*). This enactment is supplemented by Rule 5 of the Rules of the Supreme Court, May, 1880. Under the rule the registrar of bills of sale is, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, to cause a search to be made in the register or indexes under his custody, and to issue a certificate of the result of the search. The fee is 1*s.* for every copy of a bill of sale inspected, the payment to be made by a Judicature stamp (*e*).

By the Bills of Sale Act, 1882 (*f*), the provisions of the Act of 1878 as to the right to search the register and every registered bill of sale are repealed, and other provisions substituted. The Act provides that after its commencement, viz., 1st November, 1882, "Any person shall be entitled at all reasonable times to search the register, on payment of a fee of 1*s.*, or such other fee as may be prescribed, and subject to such regulations as may be prescribed shall be entitled at all reasonable times to inspect, examine and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of 1*s.* for each bill of sale inspected, and such payment shall be made by a Judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration and satisfaction, to the names, addresses and occupations of the parties, to the amount of the consideration,

(*d*) 41 & 42 Vict. c. 81, s. 16.

(*e*) *Ib.*

(*f*) 45 & 46 Vict. c. 43.

and to any further prescribed particulars" (*g*). The limitations imposed with regard to the contents of the extracts constitute the chief distinction between the old and new enactments on this subject.

SECTION VIII. ENTRY OF SATISFACTION.

On it being proved that the debt (if any) for which a bill of sale was made or granted has been satisfied or discharged, the registrar may order a memorandum of satisfaction to be written upon any registered copy of the bill of sale (*h*).

A memorandum of satisfaction may be required to be written on a registered copy of a bill of sale, if the creditor sign a consent to the satisfaction, and if an affidavit be made verifying the creditor's certificate. If the creditor decline to give his certificate, the registrar can, on proof that the debt has been satisfied or discharged, order a memorandum of satisfaction to be written on a registered copy of the bill of sale (*i*).

SECTION IX. LOCAL REGISTRATION UNDER THE BILLS OF SALE ACT, 1882.

THE Bills of Sale Act, 1882 (*k*), provides for the local registration of the contents of bills of sale. It enacts that "Where the affidavit (which under section 10 of the principal Act [*i.e.*, the Bills of Sale Act, 1878 (*l*)] is

(*g*) 45 & 46 Vict. c. 43, s. 16.
(*h*) 41 & 42 Vict. c. 31, s. 15.
(*i*) Order LXA., r. 12.
(*k*) 45 & 46 Vict. c. 43, s. 11.
(*l*) 41 & 42 Vict. c. 31.

required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same, or of the person against whom the process is issued, to be in some place outside the London Bankruptcy district, as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the County Court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar" (*m*). This enactment will not apply to any bill of sale duly registered before the commencement of the Act, *i.e.*, 1st November, 1882, so long as the registration thereof is not avoided by non-renewal or otherwise (*n*). It will be seen that local registration of the contents of bills of sale in the County Court of the district is provided for in two instances, *viz.*:-

- (1.) Where the affidavit describes the grantor or the person against whom the process is issued as residing outside the London bankruptcy district; and
- (2.) Where the chattels are described in the bill of sale as being in some place outside the London bankruptcy district.

By the Bankruptcy Act, 1869 (*o*), the London bank-

(*m*) 45 & 46 Vict. c. 43, s. 11.

(*n*) *Ib.* s. 3.

(*o*) 32 & 33 Vict. c. 71, s. 60.

ruptcy district is defined as comprising "the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any Metropolitan County Court." The following is a list of the Metropolitan County Courts (*p*) :—

1. The Bloomsbury County Court of Middlesex.
2. „ Bow „ „ „
3. „ Brompton „ „ „
4. „ Clerkenwell „ „ „
5. „ Lambeth „ „ Surrey.
6. „ Marylebone „ „ Middlesex.
7. „ Shoreditch „ „ „
8. „ Southwark „ „ Surrey.
9. „ Westminster „ „ Middlesex.
10. „ Whitechapel „ „ „

The local registration is to be made within three clear days after the registration of the bill of sale in the principal registry.

The Bills of Sale Act, 1882, in the next place proceeds to provide for the inspection of bills of sale locally registered. It enacts that "Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the County Court in the prescribed manner, and any person may search, inspect, make extracts from and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act" (*q*).

(*p*) 32 & 33 Vict. c. 71, Sch. II.

(*q*) 45 & 46 Vict. c. 43, s. 11.

CHAPTER VI.

POSSESSION AND APPARENT POSSESSION OF THE GRANTOR.

AT the beginning of the 5th Chapter it was pointed out that an unregistered bill of sale is, as against execution creditors, and trustees in bankruptcy and liquidation, void only in respect of the goods and chattels assigned thereby, which are in the possession or apparent possession of the grantor. The possession of the grantor may be either actual or constructive. Though the goods assigned be in the custody of another person, they will be deemed to be in the constructive possession of the grantor wherever he exercises control over them. For instance, it has been held that plate delivered to a banker for safe custody, or furniture to a warehouseman, will be constructively in the possession of the owner (*a*). But trade machinery or other goods, deposited by their owner as security for money advanced will not be held to be in his constructive possession (*b*).

Goods actually seized in execution by a sheriff under a writ, issued either by the grantee or a third person, will be neither in the possession nor apparent possession of the grantor, even though the grantee has himself taken no

(*a*) *Ancona v. Rogers*, 1 Ex. D. 285, see *post*, p. 77.

(*b*) *Lincoln Wagon & Engine Co. v. Mumford*, 41 L. T. 655.

possession (*c*). The same rule will hold good in the case of goods which are in the custody of a receiver appointed in an action, provided he has given the security, if any, required (*d*). But if he has not given the required security, his formal possession will not avail him as against a seizure by an execution creditor (*d*). It will be contempt of Court on the part of a grantee of even a valid bill of sale to oust a receiver appointed by the Court from possession of the goods (*e*), even if the grantee were the first to take possession (*f*). The proper course for the grantee to adopt is to apply to the Court for leave to enforce his rights by taking possession of the goods.

The case of *Ex parte Fletcher, Re Henley* (*g*), shews that in certain cases the possession of only one chattel, provided it be not wrongful, may be held the possession of all the chattels comprised in the bill of sale. But though when the possession is taken rightfully the possession will be extended by construction of law beyond the actual physical possession, it will not be so extended in the case of a wrongdoer. His possession will not be constructively extended beyond his actual physical possession.

The meaning of the term, "apparent possession," is given by the Act itself. For it provides that "personal chattels shall be deemed to be in the 'apparent possession' of the person making or giving a bill of sale so long as they remain, or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by

(*c*) *Exp. Saffery, Re Brenner*, 16 Ch. D. 668.

(*d*) *Taylor v. Eckersley*, 5 Ch. D. 740; *Edwards v. Edwards*, 2 Ch. D. 291.

(*e*) *Exp. Cochrane, Re Mead*, L. R. 20 Eq. 282.

(*f*) *Re Fells, Exp. Andrews*, 4 Ch. D. 509.

(*g*) 5 Ch. D. 809.

him, or are used and enjoyed by him in any place whatever, notwithstanding that formal possession thereof may have been taken by or given to any other person" (h).

By virtue of this enactment the goods assigned will be in the "apparent possession" of the grantor—(1) so long as they remain on premises actually occupied by him, and (2) so long as not more than formal possession of them has been delivered to or taken by some other person.

For chattels to be on premises *occupied* by the grantor, he must be the actual occupier of them, and not a mere tenant. The grantor or his agent having the key of the premises will be *prima facie* evidence of his occupation of them (i). The case of *Pickard v. Marriage* (k) shews that it is immaterial whether the premises be occupied by the grantor on his own account, or as the grantee's servant, to whom the use of the goods is allowed as part of his salary. In the case cited, the grantor of a bill of sale of furniture managed a dairy business belonging to the grantee, at a weekly salary. He was allowed to reside in the house where the business was carried on, and to use the furniture as part of his salary, the grantee residing elsewhere. The bill of sale was not properly registered. On a judgment, recovered against the grantor, the furniture was seized in execution. It was held that the execution creditor was entitled to the furniture, it being in the possession of the grantor.

What will amount to occupation is illustrated by the case of *Ex parte Morrison, Re Westray* (l). There

(h) 41 & 42 Vict. c. 31, s. 4, subs. 3.

(i) *Ancona v. Rogers*, 1 Ex. D. 285.

(k) 1 Ex. D. 364.

(l) 42 L. T. 158; 28 W. R. 524.

the furniture of a house was assigned by an unregistered bill of sale. The grantor subsequently let the house "furnished." The grantor was decided to have ceased to *occupy* the house from the day the person to whom it was so let entered into possession. Therefore it was held that the furniture, not being in the grantor's apparent possession, the grantee was entitled to it as against the grantor's trustee in bankruptcy. The goods assigned will not be deemed to be in the apparent possession of the grantor if he be not in *personal* occupation of the premises where the goods are placed, even though he is the tenant (*m*). In *Gough v. Everard* (*n*), Bramwell, B., laid it down that goods will be deemed to be in the grantor's possession while on the premises he occupies, in cases where the grantee has done nothing more than to take formal possession of them (*o*). Thus, for example, in *Seal v. Claridge* (*p*), the grantee of a bill of sale put a man in possession of the goods comprised in it. The house in which the goods were belonged to the grantor, and he had the key of it. The grantor did not sleep there, but went in and out at his pleasure. It was held that under the circumstances the goods were in the grantor's possession or apparent possession, the possession of the grantee's man being merely formal. But if the grantee has acquired exclusive possession both of the goods and of the premises on which they are, the goods will in

(*m*) *Gough v. Everard*, 2 H. & C. 1, 32 L. J. Ex. 210; and *Robinson v. Briggs*, L. R. 6 Ex. 1; 40 L. J. Ex. 17.

(*n*) 2 H. & C. 1; 32 L. J. Ex. 210.

(*o*) See *Exp. Lewis, Re Henderson*, L. R. 6 Ch. 626; *Exp. Jay, Re Blenkhorn*, L. R. 9 Ch. 697; *Exp. National Guardian Ass. Co.*, 10 Ch. D. 408; *Exp. Hooman, Re Vining*, L. R. 10 Eq. 63.

(*p*) 7 Q. B. D. 516.

law have ceased to be in the grantor's possession. This is illustrated by the case of *Smith v. Wall* (*q*). There the plaintiff had advanced to a baker £155 on the security of a bill of sale of the baker's goods. The plaintiff had taken possession of the goods by putting a man into possession of them in the baker's house on the 15th May. The business was stopped, the doors being locked, and the key kept by the man in possession. On the 17th May, a sale by auction of the goods was advertised by posters placed on the house and elsewhere, and the catalogue stated that the sale would take place under a bill of sale on the 24th May. The baker was allowed to continue in the house on the plea that he could not get lodgings elsewhere. The necessary inference from these facts was held to be that the plaintiff had taken actual and real possession, and that he had given public notice thereof by means of the catalogues announcing the sale.

As a general rule the goods will be held to be in the grantor's possession, unless some act has been done from which it will be plain to the public that the grantor's possession has ceased. The grantor discontinuing to reside on the premises will be such an act, though his business continue to be carried on and his name remain over the door (*r*). The grantees taking possession of the goods comprised in the bill of sale, and advertising them for sale as belonging to the grantor, and sold under a bill of sale, will also amount to an act shewing that the grantor's possession has ceased, even though the goods still remain in the grantor's house (*s*). But a

(*q*) 18 L. T. N. S. 182.

(*r*) *Davies v. Jones*, 10 W. R. 779.

(*s*) *Emanuel v. Bridger*, L. R. 9 Q. B. 286; 43 L. J. Q. B. 96.

mere unsuccessful attempt by the grantee to get possession of the goods will not be sufficient. The case of *Ancona v. Rogers* (*t*) is an authority in point. There, under the terms of an unregistered bill of sale, given to secure a debt, the grantor was to be allowed to remain in possession of the goods until default in payment of the debt after demand. Default being made, the grantee accordingly demanded the goods from the owner of the house in which the grantor had placed them, and threatened to seize them by force. The grantor, however, remained in possession of the goods until she filed a petition for liquidation. The Court, on these facts, held that the demand did not take the goods out of the grantor's possession, and that the trustee in liquidation was entitled to them as against the grantee. From this it follows that goods in the possession of a bailee to hold on behalf of the grantor are in the grantor's possession. The contrary, however, will be the law, if the bailee has agreed to hold the goods on account of a third party (*u*). But a sheriff will not be held to be in possession of the goods of the grantor, which are in the actual possession of a bailee, before he has obtained actual physical possession of them (*x*).

(*t*) 1 Ex. D. 285.

(*u*) *Merchant Banking Co. v. Spotten*, Ir. L. Rep. 11 Eq. 586.

(*x*) *Exp. Warren, Re Joyce*, L. R. 10 Ch. 222.

CHAPTER VII.

THE POWERS OF THE GRANTOR OF A BILL OF SALE,
AND THE RIGHTS OF HIS LANDLORD.

THE powers of the grantee of a bill of sale have already been treated of in Chapter III. It is now proposed briefly to discuss the powers over the chattels, which remain vested in the grantor after executing the bill of sale. In the case of a bill of sale of stock in trade or other chattels given by a merchant or tradesman, if the merchant or tradesman be allowed to continue in the possession of the goods, he will have an implied authority to carry on his business. Further, if his business consist either entirely or partly in the sale of goods or commodities similar in their character to those assigned by the bill of sale, the merchant or tradesman will have an implied authority to sell such goods *bonâ fide* and in the ordinary course of business. The case of *The National Mercantile Bank v. Hampson* (a) affords a good illustration of the principle. There the plaintiffs claimed to be the grantees of a registered bill of sale over all the growing crops, goods, chattels, and effects, which were then or thereafter should be on or about the farm and premises of S. The plaintiffs had allowed S. to continue his farming business and to have possession of the goods, and

(a) 5 Q. B. D. 177.

to represent himself as having the property in them. The defendant purchased them from S. in the ordinary course of business, and without knowing of the bill of sale. On these facts it was held that the bill of sale conferred by implication on the grantor a license to carry on his business and dispose of the goods so as to give a valid title to a purchaser.

The power of a merchant or of a tradesman who has executed a bill of sale over the goods assigned will only extend to a sale of the goods in the ordinary course of his business. Any act on his part which goes beyond will be unauthorized. The case of *Taylor v. McKeand* (b) is an authority in point. There a draper, by a bill of sale executed on the 1st October, 1878, assigned *inter alia* his stock in trade to the plaintiff as a security for money lent, the money to be repaid on demand. By the terms of the bill of sale the grantor was authorized, till he made default in repaying the money, to hold and make use of the goods without being interfered with by the plaintiff. The bill of sale was not registered. On the 24th October, 1878, and before any demand being made by the plaintiff for the repayment of the money, the defendants purchased for £13 3s. 1d., by private arrangement, the grantor's book debts, and also part of his stock in trade. The invoice price of the goods was £18 1s. 10d. The grantor soon afterwards absconded. At the trial the jury found that the grantor sold the goods to the defendants with a fraudulent intention, and not in the ordinary course of business, but that the defendants did not know of this and purchased the goods *bonâ fide*. The Court held that

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on this finding the plaintiff was entitled to the verdict, though the defendants purchased *bona fide*.

As a general principle it may be laid down that the goods may be sold by a tradesman only by private contract, and not by auction, a sale by auction not being generally within the ordinary course of the tradesman's business (c).

The preceding rules which have been deduced apply exclusively to the bills of sale granted by merchants or tradesmen over articles in which they deal. In the case of other classes of bills of sale different rules will apply. For should the grantor after executing a bill of sale sell the goods assigned thereby to the grantees, such an act on his part will amount to a wrongful conversion, rendering him liable to an action for damages at the suit of the grantees. This will be the law whether the bill of sale transfers absolutely and at once the possession of the goods to the grantees, or whether it gives the grantees no immediate right of possession, but contains a proviso that the grantor shall himself retain possession until he makes default. In either event an action for conversion will lie not only as against the grantor, but also as against the purchaser of the goods. For instance, in one case the terms of a bill of sale included a proviso for possession by the grantor till he made default in payment of the amount lent on the bill of sale. The grantor before the whole of the loan was paid him sold part of the goods assigned by the bill of sale, and they were then removed off his premises. The plaintiff thereupon demanded these goods from the purchaser, who, however, refused to give them up. The sale was not in the ordinary course of business. It was held

(c) *Cochrane v. Rymill*, 40 L. T. 744, 27 W. R. 776.

that the purchaser had been guilty of a wrongful conversion, and was therefore liable to the plaintiff, on the ground that, on the true construction of the bill of sale, the sale and removal of the goods conferred no title as against the plaintiff (*d*).

If the goods assigned by the bill of sale are sold not directly by the grantor himself, but through an agent, the agent may be rendered thereby liable to an action for wrongful conversion, in addition to the grantor and the purchaser. A distinction must, however, be drawn between a mere agent, who performs no act beyond negotiating the sale, and an agent who has power both to sell the goods and to pass the property in them to the purchaser. The latter class of agent will alone incur the liability; an agent who merely negotiates the sale cannot be sued. For instance, in the case of *Cochrane v. Rymill*, by a memorandum of agreement, the plaintiff let on hire certain cabs to P. The plaintiff subsequently lent P. a sum of money, taking by way of security a bill of sale over all P.'s goods. Neither the bill of sale nor the memorandum of agreement was registered under the Act. P. then took the goods to an auctioneer, and instructed him to sell them. The latter, not knowing of the plaintiff's claim, made an advance to P. on the goods. Subsequently the auctioneer sold the goods by auction, and after deducting expenses and commission paid P. the balance. The plaintiff then brought an action against the auctioneer to recover the value of the goods, and the Court of Appeal held him entitled to recover, on the

(*d*) *Payne v. Fern*, 6 Q. B. D. 620; and see *Taylor v. McKeand*, 5 C. P. D. 358, *ante*, p. 79; and *Brown v. Hickinbotham*, 50 L. J. Com. Law, 426.

ground that the auctioneer dealing with and selling the property amounted to a conversion (*e*).

It will be observed that in the case of *Cochrane v. Rymill* the auctioneer, the defendant, sold the goods himself and for his own benefit, he having a lien on them for the moneys he had advanced. Where the agent does not himself sell and transfer the title, but merely negotiates the sale, different principles will apply. Thus in a recent case the grantor of a bill of sale over certain horses and harness, without the knowledge of the grantees, the plaintiffs, took the horses and harness to the defendant's repository for sale by auction. They were entered in the catalogue, the defendant being ignorant of the existence of the bill of sale. Horses were sold under the same terms in the defendant's yard, whether they were sold privately or by auction. Before the auction the grantor of the bill of sale sold in the defendant's yard, by private contract, the horses and harness. The purchase-money was paid to the defendant, who after deducting his commission paid the balance to the grantor. The horses and harness were delivered to the purchaser. On these facts the defendant was held not guilty of conversion, he not having sold, but merely having negotiated the sale by entering it in the catalogue and having delivered the horses and harness to the purchaser (*f*).

We have seen that if the grantor of a bill of sale transfer to a third person the possession of the goods assigned, he will be guilty of a conversion, not only in cases where the grantees is entitled to immediate possession, but also even in those instances where, by the terms

(*e*) *Cochrane v. Rymill*, 27 W. R. 776, 40 L. T. 744.

(*f*) *National Mercantile Bank v. Rymill*, 44 L. T. 767.

of the bill of sale, the grantor is to continue in possession until he make default in paying the amount secured by the bill of sale. This voluntary transfer of the possession of the goods by the grantor must be distinguished from a third party taking possession of the goods without the consent of the grantor. For in the latter instance the grantee can only sue for the wrongful conversion, if he himself be at the time when the third party takes possession entitled to the possession of the goods. If under a proviso contained in the bill of sale the grantor is entitled to the possession till in default, and he has made no default, the grantee could not sue such a third person for conversion, though the grantor of course could (g). The case of *White v. Morris* (h), however, shews that where, under the terms of the bill of sale, the grantee is entitled to the present possession of the goods, but subject to a trust to allow the grantor to have possession till default be made by him in repayment of the moneys advanced, the grantee can sue a third party for wrongful conversion. In the case cited, one R. had by deed assigned to the plaintiff the goods in a certain house and shop, to secure an advance made to him by the plaintiff. The assignment was made subject to the following trusts. The plaintiff was to permit R. to remain in possession of the goods and premises until payment of the money due should be demanded. Further, the plaintiff was to have power to sell, if the money should not be then paid. Some creditors of R. having obtained judgment against him, the goods assigned were seized under a writ of

(g) *Bradley v. Copley*, 1 C. B. 685; 14 L. J. C. P. 222.

(h) 11 C. B. 1015; 21 L. J. C.P. 185.

execution and sold. On these facts it was decided that a right to the present possession of the goods passed to the plaintiff under the assignment, sufficient to enable him to maintain trespass against the defendants for taking the goods.

The landlord of the grantor levying a distress on the goods assigned by a bill of sale will not amount to a conversion, provided the distress be lawful. A landlord's right to distrain will not be defeated by the grantor having given a bill of sale over his goods, whether the bill of sale be registered under the Act or not. There are, however, two classes of chattels to which the landlord's power to distrain does not extend; and an assignment of which by a bill of sale will therefore be good even as against a landlord. The two classes referred to are:—

(1.) fixtures.

Fixtures are absolutely free from distress (*i*), even though they have been disannexed temporarily from the freehold, e.g. an anvil or a millstone (*k*). Both removable and irremovable fixtures are included in the exemption from liability to distress (*l*). Thus stoves, coppers, grates, and kitchen ranges, &c., are not distrainable for rent (*m*).

(2.) beasts of the plough (*averia carucae*), sheep, and implements of husbandry.

These articles differ from fixtures in that while fixtures are absolutely free from distress, their

(*i*) *Simpson v. Hartopp*, 1 Sm. L. C. 8th ed. p. 450.

(*k*) *Gordon v. Falkner*, 4 T. R. 567, *per Lord Kenyon, C.J.*

(*l*) *Darby v. Harris and others*, 1 Q. B. 895.

(*m*) *Ib.*

exemption is only conditional. For if there be not any other sufficient distress on the premises, they can be distrained on, provided they are not in actual use (*n*). It has been decided that cart colts and young steers, which have not been broken in or used for harness, are not exempt from distress as beasts of the plough (*o*).

It follows from this that while a bill of sale of fixtures will be good in any event as against the landlord of the premises occupied by the grantor, a bill of sale comprising beasts of the plough, sheep, or implements of husbandry, will be good as against the landlord only so long as there are other goods on the premises sufficient to satisfy his claims.

(*n*) 51 Hen. III, stat. 4; *Simpson v. Hartopp*, 1 Sm. L. C. 8th ed. 450; *Davies v. Aston*, 1 C. B. 746; Com. Dig. Distress C.
(*o*) *Keen v. Priest*, 4 H. & N. 236.

CHAPTER VIII.

THE BANKRUPTCY OF THE GRANTOR.

A BILL OF SALE, registered within the specified time and in the manner mentioned in Chapter VI., will be valid even as against the grantor's trustee in bankruptcy. This is the practical effect of the enactment contained in the 20th section of the Bills of Sale Act, 1878 (*a*). By it the doctrine of reputed ownership in bankruptcy was abolished as far as bills of sale executed after 1st January, 1879, and registered, are concerned; unless, indeed, the bill of sale were itself an act of bankruptcy, and void as being a fraud on the creditors of the grantor.

But now by the Bills of Sale Act, 1882 (*b*), the 20th section of the Act of 1878 is repealed. Therefore after the 1st November, 1882, the date fixed for the Act of 1882 to come into operation, the doctrine of reputed ownership will again be applicable to goods assigned by bills of sale, even though registered.

The doctrine of reputed ownership is based on the provisions contained in the Bankruptcy Act, 1869. That statute provides that: "The property of a bankrupt divisible among his creditors shall comprise all goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, being

(*a*) 41 & 42 Vict. c. 31.

(*b*) 45 & 46 Vict. c. 48, s. 15.

a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner; provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause (c)."

The doctrine of reputed ownership is by the Bankruptcy Act expressly restricted to traders. Under the term "traders" the following classes of persons are comprised : alum makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cow-keepers, dyers, fullers, keepers of inns, taverns, hotels or coffee-houses, lime burners, livery-stable keepers, market-gardeners, millers, packers, printers, sharebrokers, ship-owners, shipwrights, stock-brokers, stock-jobbers, victualers, warehousemen, wharfingers, persons using the trade or profession of a scrivener receiving other men's moneys or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea; persons using the trade of merchandise by way of bargaining, exchange, commission, assignment or otherwise, in gross or in retail; persons who either for themselves, or as agents or factors for others, seek their living by buying and selling, or buying and letting for hire, goods or commodities, not mere choses in action, or by the workmanship, or the conversion of goods or commodities. Under the last two clauses any kind of merchant or tradesman would seem to be included (d).

(c) 32 & 33 Vict. c. 71, s. 15, subsec. 5.
(d) 32 & 33 Vict. c. 31, Sch. I.

The Bankruptcy Act expressly excludes from the operation of the doctrine of reputed ownership the following classes: farmers, graziers, common labourers or workmen for hire, and the members of any partnership, association, or company which cannot be adjudged bankrupt under the Act (*e*).

The doctrine of reputed ownership is restricted to chattels in the possession of the bankrupt or in his order and disposition with the consent of the true owner. "That means," says a high authority, "where the possession, order and disposition is in a person who is not the true owner, or to whom they do not properly belong, and who ought not to have them, but whom the owner permits, unconsciously, as the Act supposes, to have such order and disposition. The object was to prevent deceit by a trader from the visible possession of a property to which he was not entitled; but in the construction of the Act, the nature of the possession has always been considered, and the words have been construed to mean possession of the goods of another with the consent of the true owner. . . . In all those cases in which the Act has been permitted to have the effect of divesting the right in a person, who had a right to the property, the nature of the possession has always been considered, and whether it was according to right (*f*).". These remarks were made with respect to a clause in an Irish Bankruptcy Act, but they have been universally adopted and approved by the English Courts as being applicable to the doctrine of reputed ownership as it prevails in this country (*g*).

(*e*) 32 & 33 Vict. c. 31, Sch. I.

(*f*) *Joy v. Campbell*, 1 Sch. & Lef. 328, 336, per Lord Redesdale, L.C.

(*g*) *Simmons v. Edwards*, 16 M. & W. 838, 842.

With respect to an assignment by a bill of sale by a debtor of his property to a creditor, a distinction must be drawn between those cases in which the whole of the debtor's property is assigned to the creditor, and those in which only part is so assigned.

In the following instances the granting by a bill of sale of all the goods of the grantor has been held an act of bankruptcy, viz.:—

- (1.) where the grantor was insolvent.
- (2.) where the grant of the goods was either wholly or in part for a by-gone debt (*h*), whatever the intentions or motives of the parties may have been (*i*).

But if a trader sell all his stock in trade to a *bond fide* purchaser, such will not be an act of bankruptcy on his part (*k*). For instance, where a retail draper bought on credit, and sold the goods bought to the defendant for cash during the following six months at about one-half their cost price, in order to get money to pay his creditors, the sales in question were held not to be acts of bankruptcy, there being no evidence of fraud, and the sales appearing to be real sales (*l*). The adequacy of the consideration will not be closely inquired into, unless the circumstances are such as to fix the purchaser with constructive notice of fraud (*m*).

If the debtor assign his property by bill of sale in consideration of an existing debt and of a further advance, it will not be an act of bankruptcy if the further advance

(*h*) *Woodhouse v. Murray*, L. R. 4 Q. B. 27.

(*i*) *Exp. Ellis*, 2 Ch. D. 797, 798, per Mellish, L.J.

(*k*) *Rose v. Haycock*, 3 Nev. & M. 644.

(*l*) *Lee v. Hart*, 25 L. J. Ex. 135.

(*m*) *Lee v. Hart*, 25 L. J. Ex. 135; *Fraser v. Levy*, 6 H. & N. 16.

be *bond fide* intended to enable the debtor to continue to carry on his business (*n*). It is, however, absolutely necessary that such *bond fide* intention exist. So if the bill of sale be given on the advance being made, in pursuance of an agreement to give such bill, the bill of sale will be valid and unaffected by the bankruptcy of the grantor. Again, if the bill of sale be subsequently given in pursuance of an agreement made at the time of the further advance, it will be valid just as if it were then made. The agreement, however, must be absolute and not conditional. Therefore if the execution of the bill of sale is purposely postponed till the debtor is on the verge of insolvency, it will be held bad in spite of the prior agreement. In the case of *Exp. Burton, Re Tunstall* (*o*), a trader shortly before filing a liquidation petition executed a bill of sale of his property to secure the repayment of a sum of money lent him two months before. At the date of the loan being made, the trader had agreed to give a bill of sale as security, which was not to be signed till the lender lost confidence in the borrower. The Court of Appeal decided that this was equivalent to an agreement to defer the giving of the bill of sale till the grantor should be on the verge of bankruptcy, and that consequently the bill of sale could not be supported by the agreement, but was bad. In another case (*p*) the Court of Appeal held that it is for the Court or judge to decide, from all the circumstances, whether such an agreement is *bond fide*, or whether the object in deferring the execution of the bill of sale was to protect the

(*n*) *Exp. Winder*, 1 Ch. D. 290; *Exp. Sheen*, 1 Ch. D. 560; *Exp. King*, 2 Ch. D. 256.

(*o*) 13 Ch. D. 102.

(*p*) *Exp. Kilner, Re Barker*, 13 Ch. D. 245.

grantor's credit. The Court also held that the mere fact of the agreement being to give the bill of sale "if or when required" by the creditor, does not of itself necessarily invalidate it. In the same case it was laid down that the Court will require a very clear explanation of any delay in the execution of the bill of sale, and that the *onus* is on the person who sets up the prior agreement to prove, not only its existence, but its *bona fides* (*q*).

If on the eve of bankruptcy a debtor assign by a bill of sale all his property to secure a past debt as well as a fresh advance, the smallness of the fresh advance, though not necessarily making the assignment an act of bankruptcy, will be strong evidence that the advance was made, not to enable the debtor to continue to carry on his business, but to secure the past debt. Thus in one instance a trader obtained from a creditor to whom he owed £600 a further £100, on a conditional promise that if he did not repay it within ten days he would assign all his property to the creditor to secure both sums. Default being made in the repayment, the debtor executed a bill of sale assigning his property to the creditor. Soon afterwards the debtor became bankrupt. It was held that, considering the conditional nature of the promise, and the smallness of the further advance, the assignment was an act of bankruptcy, and void as against the other creditors of the debtor (*r*).

It is not essential that the advance consist of money paid to the grantor. It may consist of an equivalent. For instance, if the creditor release the debtor from some liability (*e.g.*, a drawer of a bill paying it at the acceptor's

(*q*) *Exp. Kilner, Re Barker*, 13 Ch. D. 245.

(*r*) *Exp. Fisher, Re Ash*, L. R. 7 Ch. App. 636.

request), or do some other act so as to enable the debtor to carry on his business, the assignment in such a case will not amount to an act of bankruptcy (*s*). An example of this is afforded by the case of *Exp. Threlfall, Re Williamson* (*t*). There a publican, who owed his spirit merchants £668, ordered from them £92 worth of goods, part for immediate delivery and part in bond. At the same time he paid them on account £50 in cash, giving a cheque for £100. The goods ordered for delivery, which were worth £52, were despatched. The cheque, however, being dishonoured before they reached their destination, the goods were stopped *in transitu*. The publican then paid the amount of the cheque; but the merchants refused to release the goods stopped unless he gave security for his account. Under these circumstances the publican gave a bill of sale over the greater part of his property, but not all, in consideration of the goods being released. The bill of sale was made defeasible on the payment of the account immediately upon demand, and contained a power to seize and sell in default of payment. The goods were then delivered, and the publican continued to carry on his business. In the following week, the merchants discovering that he was absent from home at a busy time, seized under their bill of sale. A petition for liquidating his affairs was filed the very next week by the publican. On these facts the Court held that there was present consideration for the bill of sale, amounting to a substantial advance to enable the business to be continued, and that the assignment was therefore not an act of bankruptcy.

(*s*) *Exp. Reed & Steel, Re Tweddell*, L. R. 14 Eq. 586.
(*t*) 46 L. J. Bkcy. 8.

As a bill of sale given to secure an advance, whether in money or money's worth, is not necessarily an act of bankruptcy, in spite of its comprising all the property of the debtor, and containing a power to seize after-acquired property, so a similar bill of sale, given partly in consideration of a past debt, and partly in consideration of a present advance, will not be an act of bankruptcy, provided the grantor get some substantial benefit from the advance (*u*). Thus where the present advance consisted of a sum paid to another creditor of the grantor in discharge of a debt secured by a previous bill of sale, under which such creditor had seized the goods, the present advance being a substantial benefit to the grantor, was held sufficient to support a bill of sale (*v*).

With respect to a *bond fide* assignment by a debtor of part of his property by a bill of sale, it may be briefly stated that such will not *per se* amount to an act of bankruptcy, even in cases where a past debt forms the consideration (*x*). It will be for the jury to say whether, under the circumstances, the effect of the assignment is to defeat or delay creditors (*y*). But if the bill of sale really amount to an assignment of all the debtor's property, with only a colourable and not a substantial exception of part, it will be an act of bankruptcy (*z*). The same result will follow if through the assignment the grantor's creditors are prejudiced or delayed in consequence of the grantor being made practically insolvent

(*u*) *Mercer v. Peterson*, L. R. 3 Ex. 104.

(*v*) *Lomax v. Buxton*, L. R. 6 C. P. 107.

(*x*) *Smith v. Timms*, 32 L. J. Ex. 215, Cam. Sac.; *Balme v. Hutton*, 2 Y. & J. 101; *Manton v. Moore*, 7 T. R. 67.

(*y*) *Pennell v. Reynolds*, 11 C. B. N. S. 709.

(*z*) *Compton v. Bedford*, 1 W. Bl. 362.

thereby; but not otherwise. Thus where in consequence of the assignment by a trader of all his machinery, trade effects, and other property, with the exception of his furniture and book debts, which were of small value, the trader could not carry on his business, the assignment was held an act of bankruptcy, the trader being insolvent (*a*). The question in such a case is not whether the assignment, if put in force by the creditor, would put an end to the debtor's business, but whether it would make him insolvent (*b*). If a bill of sale made abroad be fraudulent by the law of the country where it is made, it will not necessarily be fraudulent in this country. For a bill of sale to be fraudulent here it must be fraudulent by English law (*c*).

The case of *Exp. Symmons, Re Jordan* (*d*), shews that if the holder of an unregistered bill of sale get possession of the goods assigned before the grantor's bankruptcy he will be entitled to them, though, had there been no bill of sale, the case would have been one of fraudulent preference. For at the time of the grantor's bankruptcy they are neither in the order or disposition nor in the apparent possession of the grantor. It will be immaterial whether the possession has been obtained by means of a transaction which taken *per se* would have amounted to a fraudulent preference.

If a bill of sale be a fraudulent preference of the grantee over the other creditors of the grantor, it will be void as against his trustee in bankruptcy or liquidation. But for

(*a*) *Exp. Bland*, 6 De G. M. & G. 757; and see *Stanger v. Wilkins*, 19 Beav. 626.

(*b*) *Young v. Waud*, 22 L. J. Ex. 27.

(*c*) *Exp. Crispin*, L. R. 8 Ch. App. 374, 379.

(*d*) 14 Ch. D. 693.

the preference to be fraudulent it must be voluntary on the part of the grantor, and not in consequence of a demand made by the creditor (*e*), and it must also have been made in contemplation of bankruptcy (*f*). The case of *Exp. Tempest, Re Craven and Marshall* (*g*), is an authority in point. There a creditor, finding that his debtor's business was being misconducted, asked him to pay his debt. Instead of paying, the debtor offered to give security on certain property, which the creditor accepted in satisfaction of part of his debt, it being insufficient in value to cover the whole. This occurred in October, 1869. On the 6th December the debtor and the creditor went to a solicitor, and told him to draw a conveyance of the property in question. Owing to the solicitor falling ill the conveyance was not executed by the debtor till the 3rd February, 1870. On the 22nd March, 1870, the debtor filed a liquidation petition. It was held that the conveyance was not a fraudulent preference, on the ground that it was executed in pursuance of the verbal agreement made in consequence of the application of the creditor.

To prove a bill of sale fraudulent, any statements made by the grantor at its execution are admissible as evidence, but not those made on any other occasion. The onus is on the grantees of the bill of sale to prove the transaction to have been *bona fide* and free from any fraud on creditors.

(*e*) *Exp. Tempest, Re Craven and Marshall*, L. R. 6 Ch. App. 70; *Smith v. Pilgrim*, 2 Ch. D. 127.

(*f*) *Gibson v. Boutts*, 3 Scott, 229.

(*g*) L. R. 6 Ch. App. 70.

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APPENDIX I.

THE STATUTES.

17 & 18 VICT. c. 36.

An Act for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels. [10th July, 1854.]

WHEREAS Frauds are frequently committed upon Creditors by secret Bills of Sale of personal Chattels, whereby Persons are enabled to keep up the Appearance of being in good Circumstances and possessed of Property, and the Grantees or Holders of such Bills of Sale have the Power of taking possession of the Property of such Persons, to the Exclusion of the rest of their Creditors: For Remedy whereof, be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. Every Bill of Sale of personal Chattels made, after the passing Bills of Sale of this Act, either absolutely or conditionally, or subject or not to be void subject to any Trusts, and whereby the Grantee or Holder shall unless the have Power, either with or without Notice, and either immediately same or a Copy after the making of such Bill of Sale, or at any future Time, to thereof be seize or take possession of any Property and Effects comprised in or filed within made subject to such Bill of Sale, and every Schedule or Inventory one Days, which shall be thereto annexed or therein referred to, or a true in like Copy thereof, and of every Attestation of the Execution thereof, Manner as shall, together with an Affidavit of the Time of such Bill of Sale Warrants of Attorney, being made or given, and a Description of the Residence and Occup-

pation of the Person making or giving the same, or, in case the same shall be made or given by any Person under or in the Execution of any Process, then a Description of the Residence and Occupation of the Person against whom such Process shall have issued, and of every attesting Witness to such Bill of Sale, be filed with the Officer acting as Clerk of the Docquets and Judgments in the Court of Queen's Bench, within Twenty-one Days after the making or giving of such Bill of Sale (in like Manner as a Warrant of Attorney in any personal Action given by a Trader, is now by Law required to be filed), otherwise such Bill of Sale shall, as against all Assignees of the Estate and Effects of the Person whose Goods or any of them are comprised in such Bill of Sale under the Laws relating to Bankruptcy or Insolvency, or under any Assignment for the Benefit of the Creditors of such Person, and as against all Sheriffs Officers and other Persons seizing any Property or Effects comprised in such Bill of Sale in the Execution of any Process of any Court of Law or Equity authorizing the Seizure of the Goods of the Person by whom or of whose Goods such Bill of Sale shall have been made, and against every Person on whose Behalf such Process shall have been issued, be null and void to all Intents and Purposes whatsoever, so far as regards the Property in or Right to the Possession of any personal Chattels comprised in such Bill of Sale, which at or after the Time of such Bankruptcy, or of filing the Insolvent's Petition in such Insolvency, or of the Execution by the Debtor of such Assignment for the Benefit of his Creditors, or of executing such Process (as the Case may be), and after the Expiration of the said Period of Twenty-one Days, shall be in the Possession or apparent Possession of the Person making such Bill of Sale, or of any Person against whom the Process shall have issued under or in the Execution of which such Bill of Sale shall have been made or given, as the Case may be.

Defeasance Condition of every Bill of Sale to be written in the same paper or parchment.

II. If such Bill of Sale shall be made or given, subject to any Defeasance or Condition or Declaration of Trust not contained in the Body thereof, such Defeasance or Condition or Declaration of Trust shall, for the Purposes of this Act, be taken as Part of such Bill of Sale, and shall be written on the same Paper or Parchment on which such Bill of Sale shall be written, before the Time when the same

~~or a Copy thereof respectively shall be filed, otherwise such Bill of Sale shall be null and void to all Intents and Purposes, as against the same Persons and as regards the same Property and Effects, as if such Bill of Sale or a Copy thereof had not been filed according to the Provisions of this Act.~~

III. The said Officer of the said Court of Queen's Bench shall cause every Bill of Sale, and every such Schedule and Inventory as aforesaid, and every such Copy filed in his said Office under the Provisions of this Act, to be numbered, and shall keep a Book or Books in his said Office, in which he shall cause to be fairly entered an alphabetical List of every such Bill of Sale, containing therein the Name, Addition, and Description of the Person making or giving the same, or in case the same shall be made or given by any Person under or in the Execution of Process as aforesaid, then the Name, Addition, and Description of the Person against whom such Process shall have issued, and also of the Person to whom or in whose Favour the same shall have been given, together with the Number, and the Dates of the Execution and filing of the same, and the Sum for which the same has been given, and the Time or Times (if any) when the same is thereby made payable, according to the Form contained in the Schedule to this Act, which said Book or Books, and every Bill of Sale or Copy thereof filed in the said Office, may be searched and viewed by all Persons at all reasonable Times, paying to the Officer for every Search against One Person the Sum of Sixpence and no more; and that, in addition to the last-mentioned Book, the said Officer of the said Court of Queen's Bench shall keep another Book or Index, in which he shall cause to be fairly inserted, as and when such Bills of Sale are filed in manner aforesaid, the Name, Addition, and Description of the Person making or giving the same, or of the Person against whom such Process shall have issued, as the Case may be, and also of the Persons to whom or in whose Favour the same shall have been given, but containing no further Particulars thereof; which last-mentioned Book or Index all Persons shall be permitted to search for themselves, paying to the Officer for such last-mentioned Search the Sum of One Shilling.

IV. The said Officer shall be entitled to receive, for his Trouble Officer en-

titled to a Fee of 1s. for filing Bill of Sale, and to account for the same. in filing and entering every such Bill of Sale or a Copy thereof as aforesaid, the Sum of One Shilling and no more; and such Officer shall render a like Account to the Commissioners of Her Majesty's Treasury, and the said Commissioners shall have the like Powers in every Particular with respect to such Account, and the Amount of Remuneration of such Officer, and with respect to any Surplus of the Fees received by him, as is provided by the Seventy-fifth Chapter of the Statute passed in the Thirteenth and Fourteenth Years of the Reign of Her present Majesty with respect to the Officers of the Court of Common Pleas therein mentioned.

Office Copies or Extracts to be given on paying as for Copies of Judgments. Satisfaction may be entered.

Interpretation of Terms.

V. Any Person shall be entitled to have an Office Copy or an Extract of every Bill of Sale, or of the Copy thereof filed as aforesaid, upon paying for the same at the like Rate as for Office Copies of Judgments in the said Court of Queen's Bench.

VI. It shall be lawful for any Judge of the said Court of Queen's Bench to order a Memorandum of Satisfaction to be written upon any Bill of Sale or Copy thereof respectively as aforesaid, if it shall appear to him that the Debt (if any) for which such Bill of Sale is given as Security shall have been satisfied or discharged.

VII. In construing this Act the following Words and Expressions shall have the Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Constructions; (that is to say,) :

The Expression "Bill of Sale" shall include Bills of Sale, Assignments, Transfers, Declarations of Trust without Transfer, and other Assurances of personal Chattels, and also Powers of Attorney, Authorities, or Licences to take possession of personal Chattels as Security for any Debt, but shall not include the following Documents; that is to say, Assignments for the Benefit of the Creditors of the Person making or giving the same; Marriage Settlements; Transfers or Assignments of any Ship or Vessel or any Share thereof; Transfers of Goods in the ordinary Course of Business of any Trade or Calling; Bills of Sale of Goods in Foreign Parts or at Sea; Bills of Lading; *India* Warrants; Warehouse Keepers Certificates; Warrants or Orders for the Delivery of Goods, or any other Documents used in the ordinary Course of Business as Proof of

the Possession or Control of Goods, or authorizing or purporting to authorize, either by Endorsement or by Delivery, the Possessor of such Document to transfer or receive Goods thereby represented:

The Expression "personal Chattels" shall mean Goods, Furniture, Fixtures, and other Articles capable of complete Transfer by Delivery, and shall not include Chattel Interests in Real Estate, nor Shares or Interests in the Stock, Funds, or Securities of any Government, or in the Capital or Property of any Incorporated or Joint Stock Company, nor Choses in Action, nor any Stock or Produce upon any Farm or Lands which by virtue of any Covenant or Agreement, or of the Custom of the Country, ought not to be removed from any Farm where the same shall be at the Time of the making or giving of such Bill of Sale:

Personal Chattels shall be deemed to be in the "apparent Possession" of the Person making or giving the Bill of Sale, so long as they shall remain or be in or upon any House, Mill, Warehouse, Building, Works, Yard, Land, or other Premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal Possession thereof may have been taken by or given to any other Person.

VIII. This Act shall not extend to *Scotland or Ireland.*

Extent of
Act.

SCHEDULE.

Name, &c. of the Person making or giving the Bill of Sale, or of the Person divested of Property.	Name, &c. of the Person to whom made or given.	Whether Bill of Sale, Assign- ment, Transfer, or what other Assurance, and whether absolute or conditional, and Number.	Date of Execution.	Date of Filing.	Sum for which made or given.	When and how payable.

29 & 30 VICT. c. 96.

An Act to Amend the Bills of Sale Act, 1854.

[10th August, 1866.]

WHEREAS an Act of Parliament was passed in the Eighteenth
 17 & 18 Year of the Reign of Her present Majesty, Chapter Thirty-six, in-
 Vict. c. 36. tituled *An Act for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels*, and it is expedient that the said Act, herein-after referred to as the "Principal Act," should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Construc- 1. The Principal Act and this Act shall, as far as is consistent
 tion of Act. with the Tenor of such Acts, be construed together.

Short 2. The Principal Act may be cited as "The Bills of Sale Act,
 Titles. 1854," and this Act may be cited as "The Bills of Sale Act, 1866."

Definition 3. The filing of a Bill of Sale, or a Copy thereof, with the
 of Registrat- Affidavit required by the Principal Act, is herein-after referred to
 ion of a as the Registration of a Bill of Sale.

Renewal of 4. The Registration of a Bill of Sale under the Principal Act
 Registrat- shall, during the Subsistence of such Security, be renewed in
 tion of Bills manner herein-after mentioned once in every Period of Five Years,
 of Sale. commencing from the Day of the Registration, and, if not so
 renewed, such Registration shall cease to be of any Effect at the
 Expiration of any Period of Five Years during which a Renewal
 has not been made as hereby required, subject to this Provision,
 that where a Period of Five Years from the Original Registration of
 any Bill of Sale under the Principal Act has expired before the
 First Day of January One thousand eight hundred and sixty-seven,
 such Bill of Sale shall be as valid to all Intents and Purposes as it
 would have been if this Act had not been passed, if such Registra-
 tion be renewed in manner aforesaid before the First Day of
 January One thousand eight hundred and sixty-seven.

5. The Registration of a Bill of Sale shall be renewed by some Mode of Person filing in the Office of the Masters of the Court of Queen's Bench (being the Officers acting as Clerk of the Docquets and Judgments in the said Court) an Affidavit stating the Date of such Bill of Sale, and the Names, Residences, and Occupations of the respective Parties thereto as stated therein, and also the Date of the Registration of such Bill of Sale, and that such Bill of Sale is still a subsisting Security, and such Masters shall thereupon number such Affidavit and renumber the original Bill of Sale or Copy filed in the said Office with a similar Number.

6. Every Affidavit renewing the Registration of a Bill of Sale shall bear an adhesive Common Law Stamp of the Value of Five Shillings, and may be in the Form given in Schedule A. to this Act, and no further Fee shall be payable on filing such Affidavit.

7. After the passing of this Act, instead of the Books directed to be kept by the Third Section of the Principal Act, there shall be kept at the said Office One Book only, in which shall be fairly inserted, as and when such Bills of Sale or Copies as required by the Principal Act, or Affidavit of Renewal as required by this Act, are respectively filed, the Name, Residence, and Occupation of the Person by whom the Bill of Sale was made or given, or in case the same was made or given by any person under or in the Execution of Process, then the Name, Residence, and Occupation of the Person against whom such Process was issued, and also the Name of the Person or Persons to whom or in whose Favour the said Bill of Sale was given, together with the Number affixed to the said Bill of Sale or Copy as directed by the Principal Act or by this Act (as the Case may be); and the Date of the said Bill of Sale or Copy, and of the Registration thereof, and the Date of the filing the said Affidavit of Renewal, and all such Particulars, shall be entered according to the Form given in Schedule B. to this Act; and the said Book, and every Bill of Sale or Copy and Affidavit filed as aforesaid, may be searched and viewed by all Persons at all reasonable Times upon Payment for every Search against One Person of the Fee or Sum of One Shilling and no more, which Fee shall be paid by a Common Law Stamp.

**Office
Copies of
Affidavits
to be sup-
plied on
Payment
for same.

Affidavits
may be
sworn
before One
of the
Masters of
the Queen's
Bench.**

Application of Enact- ments under this Act.

Extent of Act.

8. Any Person shall be entitled to have an Office Copy of such Affidavit of Renewal as is required to be filed under this Act upon paying for the same at the like Rate as for Office Copies of Bills of Sale filed under the Principal Act.

9. Any Affidavit required by the Principal Act or this Act may be sworn before One of the Masters of the Court of Queen's Bench.

10. All Enactments for the Time being in force relating to Common Law Stamps shall apply to the Stamps to be provided for the Purposes of this Act.

11. This Act shall not extend to Scotland or Ireland.

SCHEDULE A.

I, A.B. of do swear that a Bill of Sale, bearing Date the Day of 18 [insert the Date of the Bill of Sale], and made between [insert the Names, &c. of the Parties to the Bill of Sale as in the original Bill of Sale], and which said Bill of Sale [or "and a Copy of which said Bill of Sale" (as the Case may be)] was filed in the Court of Queen's Bench on the Day of 18 [insert the Date of filing], and is still a subsisting Security. Sworn, &c.

SCHEDULE B.

BILLS OF SALE ACT, 1878.

[41 & 42 Vict. c. 31.]

ARRANGEMENT OF SECTIONS.

ection.

1. Short title.
2. Commencement.
3. Application of Act.
4. Interpretation of terms.
5. Application of Act to trade machinery.
6. Certain instruments giving powers of distress to be subject to this Act.
7. Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.
8. Avoidance of unregistered bill of sale in certain cases.
9. Avoidance of certain duplicate bills of sale.
0. Mode of registering bills of sale.
 1. Renewal of registration.
 2. Form of register.
 3. The registrar.
 4. Rectification of register.
 5. Entry of satisfaction.
 6. Copies may be taken, &c.
 7. Affidavits.
 8. Fees.
9. Collection of fees under 38 & 39 Vict. c. 77, s. 26.
0. Order and disposition.
 1. Rules.
 2. Time for registration.
 3. Repeal of Acts.
 4. Extent of Act.

SCHEDULES.

41 & 42 VICT. c. 31.

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[22nd July, 1878.]

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. 1. This Act may be cited for all purposes as the Bills of Sale Act, 1878.

Commencement. 2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Application of Act. 3. This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpretation of terms. 4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,) —

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which

a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents ; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehousekeepers certificates, warrants or orders for the delivery of goods, or any other documents, used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

The expression " personal chattels " shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as herein-after defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale :

Personal chattels shall be deemed to be in the " apparent possession " of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :

" Prescribed " means prescribed by rules made under the provisions of this Act.

Application
of Act to
trade ma-
chinery.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

“Trade machinery” means the machinery used in or attached to any factory or workshop:

- 1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and
- 2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,
- 3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

“Factory or workshop” means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

- (a.) In or incidental to the making any article or part of an article; or
- (b.) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or
- (c.) In or incidental to the adapting for sale any article.

Certain in- 6. Every attornment, instrument, or agreement, not being a struments mining lease, whereby a power of distress is given or agreed to be giving powers of given by any person to any other person by way of security for distress to any present, future, or contingent debt or advance, and whereby

any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

7. No fixtures or growing crops shall be deemed, under this Act, fixtures or to be separately assigned or charged by reason only that they are growing assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

8. Every bill of sale to which this Act applies shall be duly attested, and shall be registered under this Act, within seven days of unregistered after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale in certain cases, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as

against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Avoidance
of certain
duplicate
bills of sale.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was bona fide given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Mode of
registering
bills of sale.

10. A bill of sale shall be attested and registered under this Act in the following manner:

- (1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:
- (2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person

making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to, and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed :

(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part hereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

11. The registration of a bill of sale, whether executed before or Renewal of
after the commencement of this Act, must be renewed once at least the
every five years, and if a period of five years elapses from the
registration or renewed registration of a bill of sale without a
renewal or further renewal (as the case may be), the registration
shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto, as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

form of
gister.

12. The registrar shall keep a book (in this Act called "the register" for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The regis-
trar.

36 & 37
Vict. c. 66.
38 & 39
Vict. c. 77.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal of register thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

15. Subject to and in accordance with any rules to be made under Entry of and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

16. Any person shall be entitled to have an office copy or extract copies may be taken, of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.

17. Every affidavit required by or for the purposes of this Act affidavits, may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Fees. 18. There shall be paid and received in common law stamps the following fees, viz.:

On filing a bill of sale	-	-	-	-	2s.
On filing the affidavit of execution of a bill of sale	-	-	-	-	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	-	-	-	-	5s.

Collection of fees under 38 & 39 Vict. c. 77. 19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to s. 26. such fees accordingly.

Order and disposition. 32 & 33 Vict. c. 71. 20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

Rules. 36 & 37 Vict. c. 66. 21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Time for registration. 22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Repeal of Acts. 17 & 18 Vict. c. 36. 23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

Extent of Act. 24. This Act shall not extend to Scotland or to Ireland.

SCHEDULE A.

Section 11.

I [*A.B.*] of do swear
 at a bill of sale, bearing date the day of
 [insert the date of the bill], and made between [insert the
 names and descriptions of the parties in the original bill of sale],
 d which said bill of sale [or, and a copy of which said bill of
 le, as the case may be] was registered on the day
 18 [insert date of registration], is still a
 beisting security.
 Sworn, &c.

SCHEDULE B.

Section 12.

atis- ction tered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of instru- ment.	Date.	Date of registra- tion.	Date of registra- tion of affidavit of renewal.
		Name.	Residence.	Occup- ation.					

BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.
 [45 & 46 Vict. c. 43.]

ARRANGEMENT OF SECTIONS.

1. Short title.
2. Commencement of Act.
3. Construction of Act.
4. Bill of sale to have schedule of property attached thereto.
5. Bill of sale not to affect after-acquired property.
6. Exception as to certain things.
7. Bill of sale with power to seize except in certain events to be void.
8. Bill of sale to be void unless attested and registered.
9. Form of bill of sale.
10. Attestation.
11. Local registration of contents of bills of sale.
12. Bill of sale under £30 to be void.
13. Chattels not to be removed or sold.
14. Bill of sale not to protect chattels against poor and parochial rates.
15. Repeal of part of Bills of Sale Act, 1878.
16. Inspection of registered bills of sale.
17. Debentures to which Act not to apply.
18. Extent of Act.

SCHEDULE.

45 & 46 VICT. c. 43.

An Act to amend the Bills of Sale Act, 1878. [18th August, 1882.]

1 & 42 WHEREAS it is expedient to amend the Bills of Sale Act, 1878:
 i.c. or. 31. Be it enacted by the Queen's most Excellent Majesty, by and
 with the advice and consent of the Lords Spiritual and Temporal,
 and Commons, in this present Parliament assembled, and by the
 authority of the same, as follows:
 i.e. title. 1. This Act may be cited for all purposes as the Bills of Sale

Act (1878) Amendment Act, 1882 ; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

2. This Act shall come into operation on the first day of November Commencement of one thousand eight hundred and eighty-two, which date is herein-Act. after referred to as the commencement of this Act.

3. The Bills of Sale Act, 1878, hereinafter referred to as "the Construction principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

4. Every bill of sale shall have annexed thereto or written thereon Bill of sale a schedule containing an inventory of the personal chattels comprised to have in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels attached specifically described in the said schedule; and shall be void, except thereto. as against the grantor, in respect of any personal chattels not so specifically described.

5. Save as hereinafter mentioned, a bill of sale shall be void, Bill of sale except as against the grantor, in respect of any personal chattels not to specifically described in the schedule thereto, of which the grantor acquired was not the true owner at the time of the execution of the bill of property. sale.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; as to (that is to say,) certain things.

- (1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.
- (2.) Any fixtures separately assigned or charged, and any plant or trade machinery where such fixtures, plant, or trade

machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

*Bill of sale
with power
to seize
except in
certain
events to
be void.*

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;
- (2) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;
- (3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

*Bill of sale
to be void
unless at-
tested and
registered.*

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

10. The execution of every bill of sale by the grantor shall be Attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same, or of the person against whom the process is issued, to be in some place outside the London Bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after the registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so

under 30L.

to be void.

Chattels

not to be

removed

or sold.

seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bill of sale not to protect chattels against poor and parochial rates. 14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Repeal of part of Bills of Sale Act, 1878. 15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Inspection of registered bills of sale. 16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Debentures to which Act not to apply. 17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of Act. 18. This Act shall not extend to Scotland or Ireland.

SCHEDULE.

FORM OF BILL OF SALE (a).

THIS INDENTURE made the day of , between *A.B.* of of the one part, and *C.D.* of of the other part, witnesseth that in consideration of the sum of £ now paid to *A.B.* by *C.D.*, the receipt of which the said *A.B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A.B.* doth hereby assign unto *C.D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed, by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*.]. And the said *A.B.* doth further agree and declare that he will duly pay to the said *C.D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A.B.* doth also agree with the said *C.D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*.]

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C.D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A.B.* in the presence of me *E.F.*
[*add witness' name, address, and description*].

(a) A bill of sale made or given after the 1st Nov. 1882, by way of security for payment of money by the grantor thereof is to be void, unless made in accordance with this form. [45 & 46 Vict. c. 43, s. 9.]

APPENDIX II.

PRECEDENTS (a).

PRECEDENT NO. I. (a).

ABSOLUTE BILL OF SALE OF GOODS AND FURNITURE.

THIS INDENTURE made the day of one thousand eight hundred and , BETWEEN , of Street, in the city of London, draper, of the one part, and , of Street, in the said city of London, grocer, of the other part. WHEREAS the said hath contracted with the said for the absolute sale to him, the said , of the goods, chattels, and effects in and about his dwelling-house situate and being No. Street aforesaid, which are mentioned and described in the schedule hereunder written, at or for the price or sum of pounds :

Now THIS INDENTURE WITNESSETH that in pursuance of the said contract, and in consideration of the said sum of pounds to the said paid by the said (the receipt whereof the said doth hereby acknowledge) He, the said DOETH by these presents, grant, sell, and assign unto the said , his executors, administrators, and assigns, ALL the goods, chattels, and effects in or about the said dwelling-house situate and being No. Street aforesaid, which are mentioned and described in the schedule hereunder written; TOGETHER WITH all the rights, title, interest, property, claim, or demand of the said in or to the said goods,

(a) A bill of sale made or given after the 1st Nov. 1882, by way of security for the payment of money by the grantor thereof, will be void unless made in accordance with the form in the schedule annexed to the Bills of Sale Act, 1882 (*ante*, pp. 121, 16).

hattels, and effects : To HAVE, HOLD, receive, take and enjoy he said goods, chattels, and effects, and all other the premises hereby sold and assigned, or intended so to be, with their appurtenances, unto the said , his executors, administrators, and assigns, for his and their absolute use and benefit : AND the said doth hereby for himself, his heirs, executors, and administrators, covenant with the said , his executors, administrators, and assigns, that he the said now hath good right and full power to sell and assign the goods, chattels, and effects hereby sold and assigned, or intended so to be, with their appurtenances, unto the said , his executors, administrators, and assigns, in manner aforesaid : AND it shall be lawful for the said , his executors, administrators, and assigns, at all times hereafter to have, hold, use, and enjoy the said goods, chattels, and effects, hereby sold and assigned, or intended so to be, without any let, suit, hindrance, or demand whatsoever of, from, or by him the said , his executors, administrators, or assigns.

IN WITNESS whereof the said parties to these presents have set their hands and seals, the day and year first above written.

Signed, sealed, and delivered by the said in the presence . See Precedent II., below.

Received of the above-named , the sum of £ as above written] mentioned.

Witness

The Schedule to which the foregoing Indenture refers (b).

Memorandum of

Be it remembered, that on the day of one thousand and the death hundred and , full possession of the household goods, livery of chattels, furniture, and effects [above or] within mentioned and the goods described, was given by the [above or] within named , to the above or] within named , in the presence of me [or us].

Witness, &c.

(6) After the Bills of Sale Act, 1882, comes into operation, i.e. 1st ov. 1882, a schedule must be annexed to or written on every bill of sale. The bill of sale is only to have effect in respect of the chattels enumerated in the schedule; and is to be void as to any chattels, expressed to be assigned, but not so enumerated [45 & 46 Vict. c. 43, 4.]

PRECEDENT NO. II.

ATTESTATION CLAUSE IN A BILL OF SALE.

Signed, sealed, and delivered by the said [A.B., the grantor] in the presence of me, the undersigned, a solicitor of the Supreme Court; and I hereby declare that before the execution of the above bill of sale the effect thereof was duly explained to the said grantor by me, the said attesting solicitor (c).

PRECEDENT NO. III.

**BILL OF SALE OF GOODS AND CHATTELS FROM A TENANT TO HIS
LANDLORD IN SATISFACTION OF RENT, TO SAVE THE EXPENSE
OF A DISTRESS.**

THIS INDENTURE made the day of , 18 , BETWEEN
 , (the tenant) of &c., of the one part, and , (the land-
 lord), of , of the other part: WHEREAS the said is now
 indebted to the said in the sum of £ for years'
 rent ending at last, for the messuage and premises situate
 in , in the county of , and which the said is unable
 at present to pay: AND WHEREAS the household goods, plate,
 books, and furniture, and all other the goods and chattels and effects
 belonging to the said upon the said premises have been
 appraised and valued by two sworn appraisers, at the price or sum
 of £ , as the full value thereof: AND WHEREAS the said ,
 in order to save the trouble and expense of a distress hath agreed to
 accept an assignment from the said of the said chattels and
 premises which are hereinafter specified in the schedule annexed, in

(c) After the 1st Nov. 1882, when the Bills of Sale Act, 1882, comes into operation, attestation by a solicitor will not be necessary. The execution of a bill of sale must, however, be attested by one or more credible witnesses not being a party or parties thereto. Again, after the 1st Nov. 1882, the attestation clause need not state that the effect of the bill of sale was explained to the grantor [45 & 46 Vict. c. 43, s. 10; see p. 43.]

full satisfaction of the said debt or sum of £ , due to him the said C. D. as aforesaid :

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said sum of £ so due and owing to the said as aforesaid (and which he, the said , doth hereby admit and acknowledge) he the said doth, by these presents, assign to the said , his executors, administrators, and assigns, ALL and singular the household furniture, plate, books, pictures, and other the goods, chattels, and effects, mentioned or described in or by the inventory or schedule hereunder written, AND all the right, title, interest, claim, and demand whatsoever of him the said , in or to the same and every part thereof, To HAVE AND TO HOLD the said household furniture, chattels, and other effects, hereby assigned or intended so to be, unto the , his executors, administrators, and assigns, to and for his and their own use and benefit: AND the said DOETH HEREBY for himself, his heirs, executors, and administrators, covenant with the said , his executors, administrators, and assigns, that he the said now hath good right and full power to assign all and every the chattels and effects hereby assigned or intended so to be, free from incumbrances in manner aforesaid, and according to the true intent and meaning of these presents.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Then the Attestation as in Precedent II.

Then the Schedule.

Memorandum of the delivery of the goods, &c., as in Precedent I.

PRECEDENT No. IV.

BILL OF SALE BY WAY OF MORTGAGE OF PRESENT AND AFTER-ACQUIRED FURNITURE AND GOODS WITH POWERS OF SALE AND INSURANCE.

THIS INDENTURE made the &c. BETWEEN A. B., of &c. (mortgagor), of the one part, and C. D., of &c. (mortgagee), of the other parties.

2. Covenant to pay principal and interest.

part, WITNESSETH, that in consideration of the sum of £ upon the execution of these presents paid to the said A. B. by the said C. D. (the receipt whereof is hereby acknowledged), he the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that the said A. B., his heirs, executors, and administrators, will, on the day of next, pay to the said C. D., his executors, administrators, or assigns, the sum of £ , with interest for the same, in the meantime, at the rate of per cent. per annum. AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid be the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, all and singular the furniture, plate, plated articles, linen, glass, china, books, works of art, and household effects, and horses, carriages, harness, saddlery, and stable furniture, which are now or hereafter shall be in, upon, or about the dwelling-house, stables, coach-houses, out-houses, and premises known as the Inn, being and situate in Street, in the town of , in the county of ; And all the estate, right, title, interest, claim and demand of the said A. B., in, to, and upon, the said premises: To HAVE AND TO HOLD the said chattels and premises hereinbefore expressed to be hereby assigned to the said C. D., his executors, administrators, and assigns, subject nevertheless to the proviso for redemption hereinafter contained: Provided always, and it is hereby agreed and declared, that if the said A. B., his heirs, executors, administrators or assigns, shall, on the said day of next pay to the said C. D., his executors, administrators, or assigns, the said sum of £ with interest for the same in the meantime at the rate of per cent. per annum, then the said C. D., his executors, administrators, or assigns, shall at any time thereafter, upon the request and at the cost of the said A. B., his executors, administrators, or assigns, reassign the said chattels and premises hereinbefore expressed to be hereby assigned unto the said A. B., his executors, administrators, or assigns, and do, make, and execute all acts, instruments, and things necessary to enable a memorandum of satisfaction to be written on the registered

4. Habendum.

5. Provision for redemption.

6. Security copy of these presents: AND IT IS HEREBY agreed and declared that any furniture or other articles or effects of the description hereinbefore mentioned, which shall at any time hereafter during

the continuance of this security, be brought or placed, or used in, acquired upon, or about, the said messuage and premises, whether in substitution for, or replacement of, or in addition to the furniture, articles, or effects now in, upon, or about the same, shall be included in this security, and subject to the provisions herein contained : PROVIDED ALWAYS, AND IT IS HEREBY AGREED and declared, that it shall be lawful for the said C. D., his executors, administrators, or assigns, or his or their agents, at any time or times hereafter, whether any demand of or default in payment of any principal moneys or interest owing on this security shall have been made or not, and without giving any previous notice to the said A. B., his executors, administrators, or assigns, of his or their intention in that behalf, and either before or after the said day of , to take possession of all or any of the said chattels and premises hereinbefore expressed to be hereby assigned, and for that purpose or for any purpose connected therewith to have at all reasonable times full liberty of ingress, egress, and regress, into and from the said inn and premises and every part thereof, and if necessary to break open the outer and inner doors and the windows of the said inn and premises in order to obtain admittance for that purpose, and to retain possession of all or any of the said chattels and premises, either in or upon the said inn and premises, or in any other place to which he or they may think fit to remove the same, during so long as he or they shall think fit, or at any time to give up and retake and resume such possession without being responsible for any loss or damage which may arise thereby to the said A. B., his executors, administrators, or assigns, or any other person or persons : BUT THAT, until possession shall so be taken or retaken, the said chattels and premises hereinbefore expressed to be hereby assigned, and every part thereof, shall remain in the possession and enjoyment of the said A. B., his executors, administrators, and assigns : AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that if the said sum of £ , or any part thereof, shall remain unpaid after the said day of next , he, the said A. B., his heirs, executors, or administrators, will, so long as the same sum or any part thereof shall remain unpaid, pay to the said C. D., his executors, administrators,

7. Power to enter and seize.

8. Grantor to retain interim possession.

9. Covenant for payment of interest.

or assigns, interest for the said sum of £ , or for so much thereof as shall for the time being remain unpaid, at the rate of per cent. per annum, by equal half-yearly payments, on the day of

10. Covenant not to remove the chattels. and the day of : AND the said A. B. doth hereby covenant for himself, his executors, administrators, and assigns, that he or they will not, during the continuance of this security, without the consent in writing of the said C. D., his executors, administrators, or assigns, first obtained, remove the said chattels and premises hereinbefore expressed to be hereby assigned, or any of them, from the said inn, except when any of them shall be removed for necessary repairs, or be worn out: AND will replace such of them as shall be worn out by other articles of value at least equal to the present value of the articles worn out, but not necessarily of the same kind, so as at all times to keep up the total value of the furniture and other articles for the time being comprised in this security: AND that it shall be lawful for the said C. D., his executors, administrators, and assigns, or his or their agents, at any time during the continuance of the present security, to enter into and upon the said inn and premises, or any part thereof, to view the state of the furniture and other articles for the time being subject to the present security, and take inventories thereof, or for any other purpose connected with this security, And of any want of repair or dilapidation, or other matter whereby the present security is impaired in point of value, to give to the said A. B., his executors, administrators, or assigns, or leave for him or them at the said inn, a notice in writing; and upon such notice being so given or left, the want of repair, dilapidation, or other matter complained of shall be forthwith amended or set right by the said A. B., his executors, administrators, or assigns: AND FURTHER, that the said A. B., his executors, administrators, or assigns, will at all times during the continuance of the present security, keep all the said chattels and premises comprised in such security insured against loss or damage by fire in the sum of £ at the least, and will duly and punctually pay all premiums and sums of money necessary for such purpose, and will at any time on demand produce to the said C. D., his executors, administrators, or assigns, the policy or policies of such insurance, and the receipt for every such payment : AND ALSO, that if default shall be made in keeping the said chattels and to insure.

premises so insured, it shall be lawful for the said C. D., his executors, administrators, or assigns, to insure or keep insured all or any of the said chattels and premises, and any part thereof, in any sum or sums not exceeding in the whole the sum of £ , and that the said A. B., his heirs, executors, or administrators, will, on demand, repay to the said C. D., his executors, administrators, or assigns, every sum of money expended by him or them for that purpose, with interest for the same at the rate of £ per cent. per annum, from the time or respective times of the same having been so expended; and that until such repayment the same shall be a charge upon the said chattels and premises hereinbefore expressed to be hereby assigned: And that the moneys received in respect of any such insurance as aforesaid (whether effected by the said A. B., his executors, administrators, or assigns, or by the said C. D., his executors, administrators, or assigns) shall at the option of the said C. D., his executors, administrators, or assigns, either be applied in replacing or reinstating the effects and premises which shall have been burnt, destroyed, or damaged by fire, or shall be paid to or retained by the said C. D., his executors, administrators, or assigns, in or towards satisfaction of the moneys owing on this security:

AND IT IS HEREBY AGREED, that it shall be lawful for the said C. D.,
his executors, administrators, or assigns, at any time or times after
the said day of next, without any further consent on
the part of the said A. B., or any other person or persons whomsoever,
to sell the said chattels and premises hereinbefore expressed to be
hereby assigned, or any of them, either together or separately,
either in or upon the said inn and premises or elsewhere, and
either by public auction or private contract, with power upon any
such sale to make any stipulations as to title, or evidence of title, or
otherwise, which the said C. D., or other person or persons exer-
cising their power shall deem proper; and also with power to buy
in, or rescind or vary any contract for sale, and to resell, without
being liable for any loss occasioned thereby; and, for the purposes
aforesaid or any of them, to execute and do all such assurances and
things as he or they shall think fit: PROVIDED ALWAYS, and it is
hereby agreed and declared, that neither the said C. D., nor any
other person or persons whomsoever, shall execute the power of sale
hereinbefore contained unless and until default shall have

16. Power
of sale.

been made in payment at the time hereinbefore appointed for payment thereof of some principal moneys or interest the payment whereof is intended to be hereby secured, and he or they shall have given a notice in writing to the said A. B., his executors, administrators, or assigns, to pay off and discharge the money for the time being owing on the security of these presents, or left a notice in writing to that effect for him or them at the said hotel, and default shall have been made in payment of the whole or part of such principal moneys or interest for one calendar month from the time of giving or leaving such notice, or on the mortgagor becoming bankrupt or making or entering into any arrangement or composition for the benefit of his creditors, or unless and until the whole or part of some half-yearly payment of interest which shall have become due on the security of these presents shall have become in arrear for one calendar month, or unless and until there shall have been some breach of the covenant herein contained on the part of the said A. B., his heirs, administrators, or assigns, other than the costs for the payment of the principal moneys and interest: And every such notice as aforesaid shall be sufficient, though not addressed to any person or persons by name or designation, and notwithstanding the person or any of the persons affected thereby may be unborn, unascertained, or under disability.

17. Receipt of grantee to be a discharge. AND IT IS HEREBY ALSO AGREED and declared, that, upon any such sale as aforesaid, the receipt of the said C. D., or of the other person or persons exercising the power of sale, or his or their agent or auctioneer, for the purchase-money, or so much thereof as shall be paid to him or them of the chattels and premises sold, shall effectually discharge the purchaser or purchasers therefrom, and from seeing to the application, or for being answerable for any loss or misapplication thereof: AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B. now hath power to assign all the said chattels and premises hereinbefore expressed to be hereby assigned unto the said C. D., his executors, administrators, or assigns, free from incumbrances: AND FURTHER, that he, the said A. B., his executors and administrators, and every person having or claiming any estate, right, title, or interest in or to the said chattels and premises, will at all times (at

18. Covenant for title; and right to assign.

19. Covenant for further assurance.

the cost until foreclosure or sale of the said A. B., his executors or administrators, and afterwards of the person or persons requiring the same), execute and do every such lawful assurance and thing for the further or more perfectly assuring all or any of the said premises unto the said C. D., his executors, administrators, and assigns, and enabling him or them to obtain possession of and quietly enjoy the same as by him or them shall be reasonably required.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Then the Attestation as in Precedent II.

Then the Schedule.

PRECEDENT V.

BILL OF SALE OF CHATTELS, TO SECURE A DEBT, THE DEBT TO BE PAID BY INSTALMENTS, AND UNTIL DEFAULT THE GRANTOR TO REMAIN IN POSSESSION.

THIS INDENTURE made the day of 18 , BETWEEN 1. Parties, A. B. (the debtor) of &c. , of the one part, and C. D. (the creditor) of &c. , of the other part:

WHEREAS the said A. B. is indebted to the said C. D. in the sum 2. Recitals. of £ (which the said A. B. doth hereby acknowledge): AND WHEREAS the said C. D. hath agreed to accept an assignment by the said A. B. of the chattels and effects hereinafter mentioned, in full satisfaction of the said sum of £ , due to the said C. D. as aforesaid.

Now THIS INDENTURE WITNESSETH, that in pursuance of the said 3. Assignment, and in consideration of the said sum of £ , due to the said C. D. as aforesaid, he the said A. B. doth hereby assign unto the said C. D. his executors, administrators, and assigns, all and singular the furniture, plate, pictures, books, chattels, and effects, which are now in, about, and belong to the messuage or dwelling-house now in the occupation of the said A. B., and situate and being in in the county of , and which are par-

ticularly described in the schedule hereto annexed; and all the right, title, interest, claim, and demand of the said A. B., of, in, and to the said chattels and premises, and every part thereof; To HAVE AND TO HOLD the said chattels and premises hereinbefore assigned, or intended to be assigned, unto the said C. D. his executors, administrators, and assigns, for his and their sole use and benefit.

4. Habendum.

5. Covenant for title and right to assign.

And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B. now hath full power and right to assign all and every the furniture, chattels, and premises hereby assigned or intended to be assigned unto the said C. D. his executors, administrators, and assigns, free from incumbrances, according to the true intent of these presents.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Then the Attestation as in Precedent II.

Then the Schedule.

6. Mem. as to repayment by instalments.

MEMORANDUM: IT IS HEREBY declared and agreed, by and between the within-named A. B. and C. D., that the within-written indenture is given to secure the payment of the principal sum of £ , with interest on the same after the rate hereinafter mentioned, due or to become due from the within-named A. B. to the within-named C. D., by two equal instalments, at the times and in manner following (that is to say), the sum of £ part thereof, with interest at the rate of per cent. per annum, on the day of

18 , and the sum of £ , the balance of the said principal sum of £ , with interest thereon at the rate aforesaid on the day of 18 : And it is hereby also further declared

7. Grantor to remain in possession till default.

and agreed, by and between the said A. B. and C. D., that until the said A. B. make default in payment of the said instalments, or some one or other of them, on the days aforesaid, it shall be lawful for him the said A. B., his executors or administrators, to hold, possess, use, and enjoy the said chattels and premises by the within-written indenture assigned, or intended to be assigned, without any let, hindrance, or disturbance, of, from, or by the said C. D., his executors, administrators, or assigns. But in case the said A. B. make

default in payment of any or either of the said instalments, it shall be lawful for the said C. D., his executors, administrators, or assigns, to grantor peaceably and quietly to take into his and their possession, hold and to take enjoy, all and singular the said chattels and premises, and every possession part thereof without any let, hindrance, or disturbance of, from, or by the said A. B., his executors, administrators, or assigns. As witness our hands this day of 18 .

PRECEDENT VI.

TRANSFER BY INDORSEMENT OF A CONDITIONAL BILL OF SALE.

THIS INDENTURE made the day of 18 BETWEEN the within-named C. D. (the mortgagee) of the one part, and Y. Z. (the transferee) of in the county of , of the other part. WHEREAS the within mentioned principal sum of £ , with interest thereon amounting to £ , from the day of last, is owing to the said C. D. on the security of the within-written indenture, and WHEREAS the said Y. Z. has agreed to pay to the said C. D. the said sum of £ , and £ , as interest thereon at the within-mentioned rate of per cent. per annum (making together the sum of £) upon having such transfer as is hereinafter contained of the said principal sum and interest, and the securities for the same: Now THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of £ , upon the execution hereof paid to the said C. D. by the said Y. Z. (the receipt whereof is hereby acknowledged), he the said C. D. doth hereby assign unto the said Y. Z., his executors, administrators, and assigns, ALL THAT the said principal sum of £ owing as aforesaid to the said C. D. on the security of the within written indenture, and the interest now due and henceforth to become due for the same, and all securities for the same: AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said C. D. doth hereby assign to Y. Z., his executors, administrators, and assigns, ALL the and other chattels and premises in the within written indenture comprised or expressed to be thereby assigned, with their appurtenances, subject to any right

of redemption existing under or by virtue of the within-written indenture, AND ALL THE ESTATE, right, title, interest, claim and demand whatsoever of him the said C. D. in, to, and upon the same premises; To HAVE AND TO HOLD the said principal sum, interest and chattels, and all other the premises hereinbefore assigned unto the said Y. Z., his executors, administrators, and assigns, SUBJECT nevertheless to such right of redemption as the said premises are now subject to under or by virtue of the within written indenture: AND THE SAID C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said Y. Z., his executors, administrators, and assigns, that he the said C. D. has not done or knowingly suffered, or been party or privy to anything whereby the said principal sum of £ , and interest as aforesaid, and premises hereby assigned, or any part thereof, are, or can be impeached, affected, or incumbered in title, estate, or otherwise.

In witness &c.

APPENDIX III.

F O R M S.

I.

AFFIDAVIT ON REGISTRATION OF BILL OF SALE.

In the High Court of Justice,

Queen's Bench Division.

18 , No.

I , of , a solicitor of the Supreme Court, make oath and say as follows:—

1. The paper writing hereto annexed and marked A, is a true copy of a bill of sale, and every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof.

2. The said bill of sale was made and given on the day of , 18 , by A. B. in the said bill of sale named and described.

3. I was present and saw the said A. B. duly execute the said bill of sale on the day of , 18 ; the said resides at [state residence at time of swearing the affidavit] and is [state occupation].

4. The name subscribed as the attesting witness to the said bill of sale, is in the proper handwriting of me the deponent, and I am a solicitor of the Supreme Court, and reside at .

5. Before the execution of the said bill of sale I fully explained to the said A. B. the nature and effect of such bill of sale.

Sworn at , the day of , 18 , before me,
This affidavit is filed on behalf of .

II.

AFFIDAVIT ON RENEWING THE REGISTRATION OF A BILL OF SALE.

In the High Court of Justice,
Queen's Bench Division.

I, A. B. of _____, do swear that a bill of sale executed the day of _____, 18_____, and made between A. B. of _____, of the one part, and C. D., of _____, of the other part, and which [or a copy of which] said bill of sale was registered on the _____ day of 18_____, is still a subsisting security.

Sworn at _____, the _____ day of _____, 18_____, before me,
This affidavit is filed on behalf of _____.

III.

CONSENT TO ORDER TO ENTER SATISFACTION ON BILL OF SALE.

In the High Court of Justice,
Queen's Bench Division.

I hereby consent to an order that a memorandum of satisfaction be written upon the registered copy of the bill of sale given for securing the sum of £_____, bearing date the _____ day of 18_____, made between A. B., of &c. of the one part, and me, C. D., of &c. of the other part, and filed on the _____ day of 18_____, the date for which such bill of sale was given as a security having been satisfied.

Dated the _____ day of _____, one thousand eight hundred and

(Signed) C. D.

IV.

**AFFIDAVIT VERIFYING CONSENT TO ENTRY OF SATISFACTION
ON A BILL OF SALE.**

In the High Court of Justice,
Queen's Bench Division.

I, _____ of _____, a solicitor of the Supreme Court, make oath and say as follows :—

1. C. D., of _____, in my presence, signed the writing hereunto annexed purporting to be the consent, dated the _____ day of _____, 18_____, of the said C. D. to an order that a memorandum of satisfaction be written on the registered copy of a bill of sale executed on the _____ day of _____, 18_____, and made between A. B. of _____ and the said C. D., and registered on the _____ day of _____, 18_____. .

2. The said C. D. is the same person as the C. D. mentioned and described in the said consent mentioned as a party to the said bill of sale.

Sworn at _____, the _____ day of _____, 18_____. before me,
This affidavit is filed on behalf of _____.

I N D E X.

A.

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